

**SIXTY-THIRD DAY**  
(Friday, May 12, 1989)

The Senate met at 9:30 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Washington, Zaffirini.

Absent-excused: Whitmire.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

Almighty God, who has given us our breath, our vision and our hearing for another day, we pray we will never take these and other of Your gifts for granted. May we always remember we have only what has been given. Call us together this morning that we may do right by others, and to those in authority grant confidence and discipline. Grant safe journey to those who travel this weekend and to those who work, a sense of purpose.

In Jesus' name, we pray. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

**LEAVE OF ABSENCE**

Senator Whitmire was granted leave of absence for today on account of illness on motion of Senator Brooks.

**REPORTS OF STANDING COMMITTEES**

Senator Brooks submitted the following report for the Committee on Health and Human Services:

**H.B. 2601**

Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

**H.B. 1347**

**H.B. 1345**

Senator Brooks submitted the following report for the Committee on Health and Human Services:

**H.B. 713**

Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

**H.B. 2136 (Amended)**

Senator Brooks submitted the following report for the Committee on Health and Human Services:

**C.S.H.B. 582**

**C.S.S.B. 355**

Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

**C.S.H.B. 1044**

Senator Glasgow submitted the following report for the Committee on Jurisprudence:

**C.S.H.B. 1517**

**C.S.H.B. 570**

Senator McFarland submitted the following report for the Committee on Criminal Justice:

**C.S.H.B. 526**

**C.S.H.B. 1230**

**C.S.S.B. 675**

**C.S.S.B. 909**

**C.S.S.B. 1134**

**C.S.S.B. 1451**

**C.S.S.B. 1584**

**C.S.S.B. 1330**

**C.S.S.B. 1633**

Senator Montford submitted the following report for the Committee on State Affairs:

**C.S.H.B. 362**

**C.S.H.B. 366**

Senator Edwards submitted the following report for the Committee on Nominations:

We, your Committee on Nominations, to which were referred the attached appointments, have had same under consideration, and report them back to the Senate for final consideration.

To be COMMISSIONER OF THE TEXAS DEPARTMENT OF LABOR AND STANDARDS: Richard Lee Morgan, Dallas County.

To be Members of the BOARD OF REGENTS, WEST TEXAS STATE UNIVERSITY: Mrs. Becky Love Dodson, Randall County; T. Boone Pickens, Jr., Potter County; Edward R. Scott, Jr., Randall County; H. Edward Toles, Dallas County.

To be a Member of the TEXAS HOUSING AGENCY: Stephen W. McAllister, Bexar County.

To be Members of the BOARD OF TRUSTEES, TEACHER RETIREMENT SYSTEM OF TEXAS: Stephen C. Mahood, Dallas County; Frank Monroe, Dallas County; Clarence A. Roberson, Tarrant County; Dr. Dana Williams, Nueces County.

To be Members of the AGRICULTURAL DIVERSIFICATION BOARD: Milton Jay Anderson, Colorado County; Mrs. Mary Lou Grier, Kendall County; Walter "Pinky" Sheridan Harpool, Denton County; Jerry Harris, Dawson County; George Ben Mathers, Jr., Hemphill County.

To be Members of the STATE BOARD OF VETERINARY MEDICAL EXAMINERS: Dr. Larry Michael Dubuisson, Hidalgo County; Mrs. Olivia Ruth Eudaly, Tarrant County; Dr. Robert D. Lewis, Bastrop County; Dr. Edward S. Murray, Dickens County.

To be Members of the TEACHERS' PROFESSIONAL PRACTICES COMMISSION: Dr. Audean Allman, Harris County; Charles W. Blanton, Dallas County; Ms. Diane Ewing, Dallas County; Robert Cecil Gore, Aransas County; Mrs. Jimmie R. Hancock, Lamar County; Michael Gary Hardin, Tarrant County; Mrs. Drusilla M. Knight, Nueces County; Carroll Bert Lockett, Lubbock County; Mrs. Hazel Marie Moye, Hidalgo County; Dr. Arnold D. Oates, Bexar County; Mrs. Evelyn Campbell Reed, Bexar County; Ms. Thomasine Sparks, Kleberg County; Mrs. Susan Tuminello, Harris County; Thomas Wendell Whittenburg, Nolan County.

To be a Member of the ADVISORY COUNCIL ON COMMUNITY AFFAIRS: Mark R. Wallock, Guadalupe County.

To be a Member of the TEXAS BOARD OF ARCHITECTURAL EXAMINERS: Cleveland Turner III, Potter County.

To be a Member of the BOARD OF DIRECTORS, BRAZOS RIVER AUTHORITY: Chauncey L. Bogan, Harris County.

To be a Member of the TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS: Mrs. Jane Louise Bock Guzman, Dallas County.

To be a Member of the STATE SEED AND PLANT BOARD: Benito Trevino, Jr., Starr County.

To be a Member of the RIO GRANDE VALLEY MUNICIPAL WATER AUTHORITY: Roel R. Ramirez, Starr County.

To be Members of the RIO GRANDE VALLEY POLLUTION CONTROL AUTHORITY: Ken L. Espensen, Sr., Hidalgo County; Mrs. Maria Alida Hernandez, Hidalgo County; Adolph Tijerina, Cameron County.

To be a Member of the STATE BOARD OF BARBER EXAMINERS: Mrs. Sharon Jeschke Carper, Lubbock County.

To be a Member of the BATTLESHIP TEXAS ADVISORY BOARD: George W. "Trey" Strake III, Harris County.

To be a Member of the RADIATION ADVISORY BOARD: Dr. Rodolfo Lucas Villarreal, Harris County.

To be a Member of the TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE: Jerry P. Cunningham, Dallas County.

#### SENATE BILLS AND RESOLUTIONS ON FIRST READING

On motion of Senator Parmer and by unanimous consent, the following bills and resolutions were introduced, read first time and referred to the Committee indicated:

S.C.R. 147 by Parmer Jurisprudence  
Granting Aubra Dean Garrett, Sr., Sharon Garrett, individually and as next friends for Aubra Dean Garrett, Jr., a minor, permission to sue the State of Texas and the State Department of Highways and Public Transportation.

S.C.R. 148 by Parmer Economic Development  
Urging the Bush Administration, the newly reconvened National Space Council, the Congress of the United States, the Department of Defense and the National Aeronautics and Space Administration to maintain a strong and clear federal commitment to hypersonics research.

- S.C.R. 149** by Sims Economic Development  
Memorializing Congress to release resources to the Texas Employment Commission.
- S.C.R. 150** by Lyon Jurisprudence  
Granting W. E. Washerlesky, Jr., permission to sue the State of Texas and the Texas Veterans' Land Board.
- S.J.R. 76** by Edwards Health and Human Services  
Proposing a constitutional amendment providing for issuance of general obligation bonds to finance child care facilities on employers' premises.
- S.B. 1833** by Brooks Criminal Justice  
Relating to the establishment by the Texas Adult Probation Commission of the Battering Intervention and Prevention Project.
- S.B. 1834** by Haley Criminal Justice  
Relating to psychiatric inpatient beds provided by the Texas Department of Corrections.
- S.B. 1835** by Bivins Intergovernmental Relations  
Relating to the composition and compensation of the members of the Potter County Juvenile Board.
- S.B. 1837** by Brooks Health and Human Services  
Relating to costs a hospital facility owned by the state, a hospital district, a hospital authority, or a unit of local government may recover under an insurance policy or a health care plan or program providing hospital, nursing, medical, or surgical benefits.
- S.B. 1838** by Brooks Health and Human Services  
Relating to making a health care plan established by a school district subject to certain provisions of the Insurance Code.
- S.B. 1839** by Dickson Health and Human Services  
Relating to junked vehicles.
- S.B. 1840** by Sims Natural Resources  
Relating to the exchange of certain state-owned land and to the granting of a patent.
- S.B. 1841** by Edwards Health and Human Services  
Relating to the creation of an on-site child care fund to be funded by the issuance of bonds and administered by the Texas Employment Commission.

#### HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

- H.J.R. 13**, To Committee on Finance.  
**H.J.R. 40**, To Committee on State Affairs.  
**H.B. 24**, To Committee on Criminal Justice.  
**H.B. 156**, To Committee on Jurisprudence.  
**H.B. 243**, To Committee on State Affairs.  
**H.B. 310**, To Committee on Criminal Justice.  
**H.B. 579**, To Committee on Criminal Justice.  
**H.B. 708**, To Committee on Finance.  
**H.B. 755**, To Committee on State Affairs.  
**H.B. 825**, To Committee on Health and Human Services.  
**H.B. 1405**, To Committee on Intergovernmental Relations.

H.B. 1507, To Committee on Criminal Justice.  
H.B. 1667, To Committee on Health and Human Services.  
H.B. 1794, To Committee on Economic Development.  
H.B. 2064, To Committee on Finance.  
H.B. 2161, To Committee on Criminal Justice.  
H.B. 2252, To Committee on Intergovernmental Relations.  
H.B. 2408, To Committee on State Affairs.  
H.B. 2884, To Committee on Intergovernmental Relations.  
H.B. 3012, To Committee on Intergovernmental Relations.  
H.B. 3032, To Committee on Finance.

#### CO-AUTHOR OF SENATE BILL 1557

On motion of Senator Bivins and by unanimous consent, Senator Edwards will be shown as Co-author of S.B. 1557.

#### CO-AUTHORS OF SENATE BILL 1694

On motion of Senator Parmer and by unanimous consent, Senators McFarland and Glasgow will be shown as Co-authors of S.B. 1694.

#### CO-AUTHOR OF SENATE BILL 1832

On motion of Senator Brown and by unanimous consent, Senator Brooks will be shown as Co-author of S.B. 1832.

#### SENATE BILL 169 WITH HOUSE AMENDMENT

Senator Harris called S.B. 169 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

#### Floor Amendment - McDonald

Amend S.B. 169 by adding a new SECTION 2 immediately after SECTION 1 to read as follows and renumber the remaining SECTIONS in consecutive numerical sequence:

SECTION 2. Section 13, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. (a) Nothing in this Act shall limit or affect the rights and powers of physicians and surgeons, duly qualified and registered as such under the laws of this State, to practice medicine as that term may now or hereafter be defined by law.

(b) This Act does not apply to a registered nurse duly qualified and registered under Article 4518, Vernon's Texas Civil Statutes, or to a licensed vocational nurse duly qualified and licensed under Article 4528c, Vernon's Texas Civil Statutes, provided:

(1) said registered nurse or licensed vocational nurse does not hold himself or herself out to the public as a chiropractor or use the term "chiropractor", "chiropractic", "doctor of chiropractic", "D.C.", or any derivative of those terms in connection with his or her name or practice; and

(2) said registered nurse or licensed vocational nurse practices strictly within the scope of the license so held and in strict conformity with all applicable laws and regulations relating thereto.

(c) This Act does not apply to a person who provides spinal screening services as authorized by Article 4477-70, Vernon's Texas Civil Statutes, provided:

(1) said person does not hold himself or herself out to the public as a chiropractor or use the term "chiropractor", "chiropractic", "doctor of

chiropractic", "D.C.", or any derivative of those terms in connection with his or her name or practice; and

(2) said person provides such spinal screening services in strict conformity with the provisions of Article 4477-70, Vernon's Texas Civil Statutes, and all applicable rules and regulations relating thereto.

(d) This Act does not apply to a physical therapist duly qualified and licensed under Article 4512e, Vernon's Texas Civil Statutes, provided:

(1) said physical therapist does not hold himself or herself out to the public as a chiropractor or use the term "chiropractor", "chiropractic", "doctor of chiropractic", "D.C.", or any derivative of those terms in connection with his or her name or practice; and

(2) said physical therapist practices strictly within the scope of the license so held and in strict conformity with all applicable laws and regulations relating thereto.

The amendment was read.

Senator Harris moved to concur in the House amendment to **S.B. 169**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Whitmire.

#### MESSAGE FROM THE HOUSE

House Chamber  
May 12, 1989

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**H.J.R. 32**, Proposing a Constitutional amendment authorizing the legislature to permit and regulate raffles conducted by certain nonprofit organizations for charitable purposes.

**H.B. 101**, Relating to salaries of appellate and district court justices and judges, and making an appropriation.

**H.B. 174**, Relating to charges for the use of a motel or hotel telephone.

**H.B. 183**, Relating to the regulation of underground storage tank installers; providing a penalty.

**H.B. 254**, Relating to an emergency order in a suit affecting the parent-child relationship brought by a governmental entity.

**H.B. 504**, Relating to the sale of certain mixtures of gasoline and alcohol; providing penalties.

**H.B. 911**, Relating to the regulation of certain municipally owned electric utilities.

**H.B. 976**, Relating to duties and liabilities of a real estate broker or real estate salesman concerning an inquiry or disclosure relating to whether the previous occupant of real property had, may have had, has, or may have certain communicable diseases.

**H.B. 983**, Relating to instruments administered in public schools.

**H.B. 1023**, Relating to State and local taxes on the occupancy of a hotel, motel or similar establishment.

**H.B. 1691**, Relating to the holding of political party conventions by congressional districts.

**H.B. 1728**, Relating to unemployment taxes and transfer of experience loss.

**H.B. 1941**, Relating to the collection of certain delinquent unemployment compensation taxes, penalties and interest.

**H.B. 2016**, Relating to permanent agriculture inspection stations.

**H.B. 2240**, Relating to enforcement of certain provisions of the Private Investigators and Private Security Agencies Act.

The House has refused to concur in Senate amendments to **H.B. 1211** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Madla, Chair; Lewis of Orange, McKinney, Garcia, Cavazos.

The House reconsidered the vote by which it concurred in Senate amendments to **H.B. 1407** by a non-record vote. The House then concurred in revenue dedication provisions by a record vote of 123 yeas, 3 nays, 0 present-not voting. They then concurred in the remainder of Senate amendments by a non-record vote.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### SENATE BILL 378 WITH HOUSE AMENDMENT

Senator Leedom called **S.B. 378** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.  
**Floor Amendment - Denton**

Amend **S.B. 378** as follows:

At page 1, line 19 between "defect" and ".", insert the following: "within ten (10) working days".

At page 2, line 7 between "defect" and ".", insert the following: "within ten (10) working days".

At page 3, line 8 between "defect" and ".", insert the following: "within ten (10) working days".

The amendment was read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendment to **S.B. 378** viva voce vote.

#### GUEST PRESENTED

Senator Zaffirini was recognized and presented Dr. Miguel Vazquez of San Antonio.

Dr. Vazquez, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was welcomed by the Senate and received an expression of gratitude for his service today.

**COMMITTEE SUBSTITUTE  
SENATE BILL 741 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 741**, Relating to the placement of certain nondegree vocational public school teachers on the career ladder.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 741 ON THIRD READING**

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 741** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Whitmire.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1781 ON SECOND READING**

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1781**, Relating to the competitive cost review program.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1781 ON THIRD READING**

Senator Leedom moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1781** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Whitmire.

The bill was read third time and was passed viva voce vote.

**RECORD OF VOTE**

Senator Barrientos asked to be recorded as voting "Nay" on the final passage of the bill.

**HOUSE BILL 340 ON THIRD READING  
AND FINAL PASSAGE**

The Senate resumed consideration of the following bill as unfinished business:

**H.B. 340**, Relating to exempting certain vending machine sales from sales and use taxes.

(Final passage of the bill having been reconsidered on May 9, 1989.)



Question - Shall the bill be finally passed?

Senator McFarland offered the following amendment to the bill:

Amend **H.B. 340** as follows:

SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.0241 to read as follows:

Sec. 151.0241. PERSONS WHO MAY BE REGARDED AS CONSUMERS. The comptroller may determine by rule that the ultimate consumer of an item sold or to be sold through a vending machine is the vendor who places the product for sale through the vending machine provided the comptroller determines that such collection method would enhance revenue and simplify administration of this chapter.

By unanimous consent, the amendment was read and was adopted viva voce vote.

The bill as amended was again finally passed viva voce vote.

#### SENATE BILL 188 WITH HOUSE AMENDMENTS

Senator Brown called **S.B. 188** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### Committee Amendment - C. Harris

Amend **S.B. 188** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 14.03(b), Family Code, is amended to read as follows:

(b) In determining the terms and conditions for possession of a child by a parent named as a possessory conservator, the court shall be guided by the guidelines in Sections 14.032 and 14.033 of this code [The court by local rule shall establish and publish schedules, guidelines, and formulas for use in determining the times and conditions for possession of and access to a child].

SECTION 2. Section 14.03(j), Family Code, as relettered by **S.B. No. 221**, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(j) ~~The Supreme Court of Texas [shall determine whether it should promulgate advisory guidelines by rule to aid the trial courts of this state in promulgating the local schedules, guidelines, and formulas for use in determining the times and conditions for possession of and access to a child as required by Subsection (b) of this section. The supreme court]~~ shall appoint an advisory committee of 25 [15 or more] persons, composed of legislators, judges, lawyers, and laypersons, to assist the legislature [it] in making a [this determination, and, if appropriate, to assist in the] periodic review and suggested revisions, if any, [updating] of the [any advisory] guidelines in this code for the possession of a child by a parent named as a possessory conservator [published by the court]. At least five members of this committee shall be or have been managing conservators of a child, and at least five members shall be or have been possessory conservators.

SECTION 3. Section 14.031(a), Family Code, is amended to read as follows:

(a). Each decree that provides for the appointment of a possessory conservator who has possession of or access to a child shall include, and in its absence shall be deemed to include, the requirement that the managing conservator and each possessory conservator who intend a change of place of residence must give written notice of the intended date of change, new telephone number, and new street address of residence to every other party who has possession of or access to the child.

The notice must be given on or before 30 days before the conservator changes the conservator's place of residence. If [or, if] the conservator did not know or could not have known of the change of residence or if the required information was not available within the 30-day period, the conservator shall supply the written notice of the change of residence or the related information within five days after the date [on the first day] that the conservator knew or should have known of the change or of the related information.

SECTION 4. Subchapter A, Chapter 14, Family Code, is amended by adding Sections 14.032 through 14.035 to read as follows:

Sec. 14.032. GUIDELINES FOR THE POSSESSION OF A CHILD BY A PARENT NAMED AS A POSSESSORY CONSERVATOR. (a) Child Three Years of Age or Older. The guidelines for the possession of a child by a parent named as a possessory conservator in this chapter are intended to guide the courts in determining the terms and conditions for possession of a child by a parent named as a possessory conservator in any suit affecting the parent-child relationship. These guidelines are designed to apply to a child three years of age or older.

(b) Child Less Than Three Years Old. In rendering an order for possession of a child less than three years old, the court may either render a "standard possession order," as defined in Section 14.033 of this code, or an order appropriate under the circumstances considering the age of the child. If a standard possession order is not rendered, the court shall also render a prospective order to take effect on the child's third birthday, which presumptively will be the standard possession order.

(c) Factors. In determining the terms of possession of a child, the court shall be guided by the guidelines and may consider, in varying from or following the guidelines:

- (1) the age, circumstances, needs, and best interest of the child;
- (2) the circumstances of the managing conservator and of the parent named as a possessory conservator; and
- (3) any other relevant factor.

(d) Application Without Regard to Sex. The court shall apply the guidelines without regard to the sex of the parents or the child.

(e) Supersede Local Rules. The guidelines supersede any and all local rules that conflict with the guidelines.

(f) Supersede Supreme Court Rules. The guidelines supersede any and all Texas Supreme Court rules that conflict with the guidelines. Notwithstanding Section 22.004, Government Code, or any other law, the guidelines may not be repealed or modified by a rule adopted by the Texas Supreme Court.

Sec. 14.033. STANDARD POSSESSION ORDER. (a) Definitions. In this section:

(1) "School" means the primary or secondary school in which the child is enrolled, or, if the child is not enrolled in a primary or secondary school, the public school district in which the child primarily resides.

(2) "Standard order" or "standard possession order" means an order that provides a parent named as a possessory conservator with rights of possession of a child in accordance with the terms and conditions provided by this section.

(b) Mutual Agreement or Specified Terms for Possession. The court shall expressly state in a standard order that the parties may have possession of the child at any and all times mutually agreed to in advance by the parties and, failing mutual agreement, shall have possession of the child under the specified terms set out in the standard order.

(c) Parents Who Reside 100 Miles or Less Apart. Except as otherwise explicitly provided, if the possessory conservator resides 100 miles or less from the primary residence of the child, the possessory conservator shall have the right to possession of the child as follows:

(1) on weekends from 6 p.m. on the first, third, and fifth Friday of each month until 6 p.m. on the following Sunday or, at the possessory conservator's election made before the rendition of the original or modification order, from the time the child's school day ends, if any, until 6 p.m. on the following Sunday; and

(2) on Wednesdays of each week during the regular school term from 6 p.m. until 8 p.m., or, at the possessory conservator's election made before the rendition of the original or modification order, from the time the child's school day ends, if any, until 8 p.m.

(d) Weekend Possession Extended by Holiday. Except as otherwise explicitly provided, if a weekend period of possession of the possessory conservator coincides with a school holiday during the regular school term, or with a federal, state, or local holiday during the summer months in which school is not in session, the weekend possession shall extend until 6 p.m. on a Monday holiday or school holiday or shall begin at 6 p.m. Thursday for a Friday holiday or school holiday, as applicable.

(e) Vacations and Holidays. The following provisions govern possession of the child for vacations and for certain specific holidays and supersede any conflicting weekend or Wednesday periods of possession provided by Subsections (c) and (d) of this section. The possessory conservator and managing conservator shall have rights of possession of the child as follows:

(1) the possessory conservator shall have possession of the child in even-numbered years from 6 p.m. on the last school day before the Christmas school vacation begins until 10 a.m. on December 26th, and the managing conservator shall have possession for the same period in odd-numbered years;

(2) the possessory conservator shall have possession of the child in odd-numbered years from 10 a.m. on December 26th until 6 p.m. on the day before school resumes, and the managing conservator shall have possession for the same period in even-numbered years;

(3) the possessory conservator shall have possession of the child in odd-numbered years from 6 p.m. on the Wednesday before Thanksgiving until 6 p.m. on the following Sunday, and the managing conservator shall have possession for the same period in even-numbered years;

(4) the possessory conservator shall have possession of the child in even-numbered years from 6 p.m. on the last school day before the school's spring vacation begins until 6 p.m. on the day before school resumes, and the managing conservator shall have possession for the same period in odd-numbered years;

(5) if the possessory conservator:

(A) gives the managing conservator written notice by May 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 30 days between June 1 and August 31, to be exercised in no more than two separate periods of at least seven consecutive days each; or

(B) does not give the managing conservator notice by May 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 30 consecutive days beginning at 6 p.m. on July 1 and ending at 6 p.m. on July 31;

(6) if the managing conservator gives the possessory conservator written notice by May 15 of each year or gives the possessory conservator 14 days' notice on or after May 16 of each year, the managing conservator shall have possession of the child on any one weekend from Friday at 6 p.m. to 6 p.m. on the following Sunday during any one period of possession by the possessory conservator under Subdivision (5) of this subsection, provided that the managing conservator picks up the child from the possessory conservator and returns the child to that same place;

(7) if the managing conservator gives the possessory conservator written notice by May 15 of each year or gives the possessory conservator 14 days' notice on or after May 16 of each year, the managing conservator may designate one weekend between June 1 and August 31, during which an otherwise scheduled weekend period of possession by the possessory conservator will not take place, provided that the weekend so designated does not interfere with the possessory conservator's period or periods of extended summer possession or with Father's Day if the possessory conservator is the father of the child;

(8) the parent not in possession of a child on the child's birthday shall have possession of the child from 6 p.m. to 8 p.m. on that day, provided that the parent not in possession picks up the child from the child's residence and returns the child to that same place;

(9) if a conservator, the father shall have possession of the child on Father's Day from 9 a.m. to 6 p.m., provided that, if he is not in possession of the child, he picks up the child from the child's residence and returns the child to that same place; and

(10) if a conservator, the mother shall have possession of the child on Mother's Day from 9 a.m. to 6 p.m., provided that, if she is not in possession of the child, she picks up the child from the child's residence and returns the child to that same place.

(f) Parents Who Reside Over 100 Miles Apart. Except as otherwise explicitly provided, if the possessory conservator resides more than 100 miles from the residence of the child, the possessory conservator shall have the right to possession of the child as follows:

(1) if the possessory conservator gives the managing conservator seven days' written or telephonic notice preceding a designated weekend, the possessory conservator shall have possession of the child on any weekend between 6 p.m. on the day school recesses for the weekend and 6 p.m. on the day before school resumes after the weekend, provided that such weekend possessions do not exceed two per calendar month and do not conflict with Subsections (c)(1)-(3) and (e)(8)-(10) of this section;

(2) the terms of Subsections (c)(1)-(3) and (e)(8)-(10) of this section are applicable when the possessory conservator resides more than 100 miles from the residence of the child;

(3) every spring school vacation from 6 p.m. on the day school recesses until 6 p.m. on the day before school resumes after that vacation;

(4) if the possessory conservator:

(A) gives the managing conservator written notice by May 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 42 days between June 1 and August 31, to be exercised in no more than two separate periods of at least seven consecutive days each; or

(B) does not give the managing conservator notice by May 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 42 consecutive days beginning at 6 p.m. on June 15 and ending at 6 p.m. on July 27;

(5) if the managing conservator gives the possessory conservator written notice by May 15 of each year or gives the possessory conservator 14 days' notice on or after May 16 of each year, the managing conservator shall have possession of the child on any one weekend from Friday at 6 p.m. to 6 p.m. on the following Sunday during any one period of possession by the possessory conservator under Subdivision (4) of this subsection, provided that the managing conservator picks up the child from the possessory conservator and returns the child to that same place; and

(6) if the managing conservator gives the possessory conservator written notice by May 15 of each year or gives the possessory conservator 30 days' notice on or after May 16 of each year, the managing conservator may designate 21 days between June 1 and August 31, to be exercised in no more than two separate periods of at least seven consecutive days each, during which the possessory conservator shall not have possession of the child, provided that the period or periods so designated do not interfere with the possessory conservator's period or periods of extended summer possession or with Father's Day if the possessory conservator is the father of the child.

(g) General Terms and Conditions. Except as otherwise explicitly provided, terms and conditions of possession of a child that apply irrespective of the distance between the residence of a parent and the child are as follows:

(1) the managing conservator shall surrender the child to the possessory conservator at the beginning of each period of the possessory conservator's possession at the residence of the managing conservator;

(2) the possessory conservator shall be ordered to do one of the following: the possessory conservator shall surrender the child to the managing conservator at the end of each period of possession at the residence of the possessory conservator; or, in the alternative, the possessory conservator shall return the child to the residence of the managing conservator at the end of each period of possession;

(3) each conservator shall return with the child the personal effects that the child brought at the beginning of the period of possession;

(4) either parent may designate any competent adult to pick up and return the child, as applicable; a parent or a designated competent adult shall be present when the child is picked up or returned; and

(5) a parent shall give notice to the person in possession of the child on each occasion that the parent will be unable to exercise that parent's right of possession for any specified period; repeated failure of a parent to give notice of an inability to exercise possessory rights may be considered as a factor in a modification of those possessory rights.

(h) Means of Travel. In an order providing for the possessory conservatorship of a child the court may restrict the means of travel of the child by a legal mode of transportation only after a showing of good cause contained in the record and a finding by the court that the restriction is in the best interest of the child. Further, the court shall set forth in its order the specific duties of the conservators to provide appropriate transportation to and from the relevant transportation facilities.

(i) Alternative Possession Times. If a child is enrolled in school, the possessory conservator consents, and the court finds that it is in the best interest of the child, the standard order may expressly provide that the possessory conservator's period of possession shall begin or end, or both, at a different time expressly set in the standard order under and within the range of alternative times provided by one or both of the following subdivisions:

(1) instead of a period of possession by a possessory conservator beginning at 6 p.m. on the day school recesses, the period of possession may be set in the standard order to begin at the time school recesses or at any time between the time school recesses and 6 p.m.; and

(2) instead of a period of possession by a possessory conservator ending at 6 p.m. on the day before school resumes, the period of possession may be set in the standard order to end at the time school resumes or at any time between 6 p.m. on the day before school resumes and the time that school resumes.

(j) Application of Alternative Possession Times. The alternative possession times provided by Subsection (i) of this section may be applied to regular weekend possession under Subsections (c)(1) and (f)(1) of this section, but may not be applied to Wednesday evening possession under Subsection (c)(2) of this section.

(k) Rebuttable Presumption. In any suit affecting the parent-child relationship, there is a rebuttable presumption that the "standard order" set forth in this section provides reasonable minimum possession of a child for a parent named as a possessory conservator and that the order is in the best interest of the child. A court may determine that the application of these guidelines would be unworkable or inappropriate under the circumstances and not in the best interest of the child. Without regard to Rules 296 through 299, Texas Rules of Civil Procedure, in all cases in which possession of a child by a parent is contested and the possession of the child is set by the court in variance with the guidelines, on written request made or filed with the court not later than 10 days after the date of the hearing or on oral request made in open court during the hearing, the court shall state in the order the specific reasons for all deviations from the standard possession order.

(l) Temporary Orders. The rebuttable presumption established in this section is applicable to temporary orders for possession of a child by a parent. This subsection does not impair the authority of the court to enter other temporary orders under this code.

(m) Unusual Circumstances. If the work schedule or other special circumstances of the managing conservator, the possessory conservator, or the child make the standard possession order unworkable or inappropriate, the court shall render an order that grants periods of possession of the child as similar as possible to those provided by the standard order.

(n) Agreements. This section does not prohibit the parties from agreeing to periods of possession of a child that vary from the standard order or prohibit court approval of the agreement concerning conservatorship as provided by Section 14.06 of this code.

(o) Modification. The court may consider the guidelines to determine if there has been a material and substantial change in circumstances or if the order has become unworkable or inappropriate under Section 14.08(c)(3) of this code in determining whether a modification of the existing order for possession of or access to a child by a parent is in the best interest of the child. If the terms and conditions for possession of a child by a parent contained in the order sought to be modified are not in substantial compliance with a standard possession order, this may warrant a modification of the prior order in accordance with the terms of a standard order if the modification is in the best interest of the child.

(p) Posting Notice. A copy of these guidelines shall be prominently displayed at or near the entrance to the courtroom and on the official bulletin board, if any, in those courts having jurisdiction over the setting of possession of a child.

Sec. 14.034. GUIDELINES FOR THE POSSESSION OF A CHILD BY A PARENT NAMED AS A JOINT MANAGING CONSERVATOR. The guidelines in Section 14.033 of this code constitute a presumptive minimum amount of time for possession of a child by a parent named as a joint managing conservator who is not awarded the primary physical residence of the child in any suit affecting the parent-child relationship.

Sec. 14.035. FAMILY VIOLENCE. (a) Definition. In this section, "force" means abusive physical force with the intent to cause bodily harm.

(b) Use of Force. Notwithstanding any other provision in this chapter, if a court finds that a parent has used force, it may deny or restrict possession of or access to the child as provided by Section 14.03(d) of this code.

(c) Restricted Access Orders. In restricting the possession of or access to a child of a parent who has used force, the court:

(1) may order that the possession or access be supervised by a person designated by the court; or

(2) render any other order found to be in the best interest of the child without reference to the guidelines in Section 14.033 of this code.

(d) Relevant Evidence. In determining whether to deny or restrict possession of or access to the child under this section because a parent has used force, the court may consider any fact that is relevant to the present cause of action, including, if relevant, the following:

(1) the use of alleged force by or against either parent, the child, an adult residing in the residence of the child or the parent, or any person younger than 18 years of age;

(2) whether the child who is the subject of the present cause of action was the subject of, present during, or aware of, the alleged use of force;

(3) the circumstances surrounding and leading up to the alleged use of force;

(4) the immediacy or remoteness of the alleged use of force;

(5) the regularity, if any, of the alleged use of force;

(6) consequences resulting from the alleged use of force, including whether or not the force caused injury or was officially reported to any private or public entity; and

(7) the circumstances surrounding the making of the allegation of the use of force in the present cause of action.

(e) Best Interest of Child. In any order that denies or imposes any restrictions or limitations under this section on a parent's right to possession of or access to a child, the restrictions or limitations may not exceed that which is required to protect the best interest of the child.

(f) Periodic Review. Any order that denies or imposes any restrictions or limitations under this section on a parent's right to possession of or access to a child shall provide that the order shall be periodically reviewed on a regular basis to determine the continuing need for or modification of the denial or imposition of the restrictions or limitations.

SECTION 5. Sections 14.05(a) and (h), Family Code, are amended to read as follows:

(a) The court may order either or both parents to make periodic payments or a lump-sum payment, or both, for the support of the child until he or she is 18 years of age in the manner and to the persons specified by the court in the decree. The court of continuing exclusive jurisdiction may modify an existing order or enter a new order extending child support past the 18th birthday of the child, whether the request for such an order is filed before or after the child's 18th birthday, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma. The order for periodic support may provide that payments continue until the end of the school year in which the child graduates. In addition, the court may order a parent obligated to support a child to set aside property to be administered for the support of the child in the manner and by the persons specified by the court in the decree. In determining the amount of child support, the court shall be guided by ~~[consider all appropriate factors, including but not limited to]~~ the child support guidelines contained in Sections 14.052 through 14.058 of this chapter for the support of a child ~~[adopted by the supreme court, the needs of the child, the ability of the parents to contribute to the child's support, and any financial resources available for the support of the child]~~.

(h) The Supreme Court of Texas ~~[shall by rule adopt guidelines to compute an equitable amount of child support to guide the courts in determining the amount of child support. The supreme court]~~ shall appoint an advisory committee on child support guidelines of 25 ~~[15 or more]~~ persons, composed of legislators, judges, lawyers, and laypersons, to assist the legislature ~~[it]~~ in making a ~~[the]~~ periodic review and suggested revisions, if any, ~~[updating, if necessary,]~~ of the ~~[child support]~~ guidelines in this code for the support of a child. At least five members of this ~~[the]~~ committee shall be or have been obligated to make payments of periodic child

support, and at least five members shall be or have been entitled to receive periodic child support payments.

SECTION 6. Subchapter A, Chapter 14, Family Code, is amended by adding Sections 14.052 through 14.058 to read as follows:

Sec. 14.052. GUIDELINES FOR THE SUPPORT OF A CHILD. (a) Purpose. The guidelines for the support of a child in this chapter are intended to guide the courts in determining equitable amounts of child support in any suit affecting the parent-child relationship, including without limitation actions involving divorce, modification, paternity, and legitimation, and in any proceeding brought under a reciprocal support action.

(b) Factors. In determining the amount of child support, the court shall be guided by the guidelines and may consider, in varying from or following the guidelines:

- (1) the needs of the child;
- (2) the ability of the parents to contribute to the support of the child;
- (3) any financial resources available for the support of the child; and
- (4) the amount of possession of and access to a child.

(c) Supersede Local Rules. The guidelines supersede any and all local rules that conflict with the guidelines.

(d) Supersede Supreme Court Rules. The guidelines supersede any and all Texas Supreme Court rules that conflict with the guidelines. Notwithstanding Section 22.004, Government Code, or any other law, the guidelines may not be repealed or modified by a rule adopted by the Texas Supreme Court.

Sec. 14.053. ESTABLISHING ANY ORDER OF CHILD SUPPORT. (a) Order Based on Guidelines. An order of child support shall be based on the "net resources" of the obligor and obligee, which shall be considered by the court, together with the other factors listed in the guidelines for the support of a child in this chapter. Whenever feasible, gross income should first be computed on an annual basis and then should be recalculated to determine average monthly gross income.

(b) Net Resources Defined. "Net resources," for the purpose of determining child support liability, are 100 percent of all wage and salary income and other compensation for personal services (including commissions, tips, and bonuses), interest, dividends, royalty income, self-employment income (as described in Subsection (c) of this section), net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation), and all other income actually being received, including but not limited to severance pay, retirement benefits, pensions, trust income, annuities, capital gains, social security benefits, unemployment benefits, disability and workers' compensation benefits, income from notes or accounts receivable regardless of the source, gifts and prizes, spousal maintenance, and alimony, less (subtracting) 100 percent of social security taxes, federal income tax withholding for a single person claiming one personal exemption and the standard deduction, union dues, and expenses for health insurance coverage for the obligor's child. Benefits paid pursuant to aid for families with dependent children and any other child support received from any source shall be disregarded in calculating net resources.

(c) Self-Employment Income. Income from self-employment, whether positive or negative, includes benefits allocated to an individual from a business or undertaking in the form of a proprietorship, partnership, joint venture, close corporation, agency, or independent contractor, less ordinary and necessary expenses required to produce that income, but may exclude amounts allowable under federal income tax law as depreciation, tax credits, or any other business expenses shown by the evidence to be inappropriate to the determination of income for the purpose of calculating child support.



(d) Health Insurance. The guidelines for a court order for the support of a child in this chapter assume that the court will order the obligor to provide health insurance coverage for the child subject of the suit in addition to the amount of child support calculated pursuant to these guidelines. If the court finds and sets forth in the order setting child support that the obligee will maintain health insurance coverage at the obligee's expense for the child, the court may increase the amount of child support to be paid by the obligor in an amount not exceeding the total expense to the obligee for maintaining health insurance coverage.

(e) Additional Factors. The court may consider any additional factors that increase or decrease the ability of the obligor to make child support payments. When appropriate, in order to determine the "net resources" available for child support the court may assign a reasonable amount of "income" attributable to assets that do not currently produce income. However, the court shall consider whether certain nonincome-producing property can be liquidated without an unreasonable financial sacrifice because of cyclical or other market conditions. If there is not an effective market for the property, the carrying costs of such an investment, including property taxes and note payments, shall be offset against the income attributed to the property. The court may also assign a reasonable amount of "income" to income-producing assets that have been voluntarily transferred or reduced in earnings with the effect of reducing the net resources of the party. As used in this section, "property" and "assets" include both real and personal property and assets, including a business and investments.

(f) Intentional Unemployment or Underemployment. If the actual income of the obligor is significantly less than what the obligor could earn because the obligor is intentionally unemployed or underemployed, the court may apply these guidelines to the earning potential of the obligor.

(g) Furnish Information. The court shall require the parties to furnish sufficient information to enable it to accurately identify the parties' net resources and their abilities to provide child support. The court should request copies of the last two years' tax returns, accompanied by financial statements of the parties, and current wage stubs.

(h) Computing Net Monthly Income. To assist the courts in establishing the amount of a child support order, the agency charged with enforcing child support orders under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.) shall annually promulgate tax charts to compute "net monthly income," subtracting from gross income social security taxes and federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

(i) Equal Application. These guidelines shall be applied without regard to the sex of the obligor, obligee, or the child.

(j) Agreements. This section does not prohibit the parties from agreeing to an amount of child support that varies from the guidelines or prohibit the court from approving the agreement concerning support of the child as provided by Section 14.06 of this code.

Sec. 14.054. EVIDENTIARY FACTORS. In applying the guidelines for the support of a child in this chapter, the court shall be guided by the guidelines for the support of a child in this chapter. However, the court may, in rendering its final determination of the amount of support, set the amount of child support either within or outside the range recommended in Section 14.055 of this code if relevant factors other than the guidelines justify a variance from the guidelines. In making its final determination, the court shall consider all relevant factors, including but not limited to:

(1) the amount of the obligee's net resources, including the earning potential of the obligee if the actual income of the obligee is significantly less than

what the obligee could earn because the obligee is intentionally unemployed or underemployed and including, as provided by Section 14.053(e) of this code, any increase or decrease in the income of the obligee or income that may be attributed to the property and assets of the obligee;

(2) the age and needs of the child;

(3) child care expenses incurred by either party in order to maintain gainful employment;

(4) whether either party has the managing conservatorship or actual physical custody of another child;

(5) the amount of child support actually and currently being paid or received by either party under another child support order;

(6) the amount of alimony or spousal maintenance actually and currently being paid or received by a party;

(7) the expenses for a son or daughter for education beyond secondary school;

(8) whether the obligor or obligee has an automobile, housing, or other benefits furnished by his or her employer, another person, or a business entity;

(9) the amount of other deductions from the wage or salary income and from other compensation for personal services of the parties;

(10) provision for health care insurance and payment of uninsured medical expenses;

(11) special or extraordinary educational, health care, or other expenses of the parties or of the child;

(12) the cost of travel in order to exercise access to or possession of a child;

(13) positive or negative cash flow from any real and personal property and assets, including a business and investments;

(14) debts or debt service assumed by either party; and

(15) any other reason or reasons consistent with the best interest of the child, taking into consideration the circumstances of the parents.

Sec. 14.055. GUIDELINES: AMOUNT ORDERED. (a) Rebuttable Presumption. The guidelines for the support of a child in this chapter are specifically designed to apply to situations in which the obligor's monthly net resources are \$4,000 or less. In any suit affecting the parent-child relationship, there is a rebuttable presumption that an order containing the amount of periodic child support payments established by the schedule provided in this section is reasonable and that the order is in the best interest of the child. A court may determine that the application of the guidelines would be unjust or inappropriate under the circumstances.

(b) Schedule: \$4,000 or Less Monthly Net Resources. In rendering an order of child support under circumstances in which the obligor's monthly net resources are \$4,000 or less, the court shall presumptively apply the following schedule:

**CHILD SUPPORT GUIDELINES**

**BASED ON THE MONTHLY NET RESOURCES OF THE OBLIGOR**

<u>1 child</u>	<u>20% of Obligor's Net Resources</u>
<u>2 children</u>	<u>25% of Obligor's Net Resources</u>
<u>3 children</u>	<u>30% of Obligor's Net Resources</u>
<u>4 children</u>	<u>35% of Obligor's Net Resources</u>
<u>5§ children</u>	<u>Not less than the amount for 4 children</u>

(c) More Than \$4,000 Monthly Net Resources. In situations in which the obligor's net resources exceed \$4,000 per month, the court shall presumptively apply the percentage guidelines in Subsection (b) of this section to the first \$4,000 of the obligor's net resources. Without further reference to the percentage recommended by these guidelines, the court may order additional amounts of child support as proven, depending on the needs of the child at the time of the order.

(d) Partial Termination of Support Obligation. A child support order that provides for the termination of the support for one child because the child reaches the age of majority, graduates from high school, or for some other reason, but continues the support order for another child must establish a level of support for the remaining child or children in accordance with these guidelines.

(e) Temporary Orders. The rebuttable presumption established in this section is applicable to temporary orders for the support of a child. This subsection does not impair the authority of the court to enter other temporary orders under this code.

Sec. 14.056. MODIFICATION OF PRIOR ORDERS. (a) Effect of Guidelines. The court may consider the guidelines for the support of a child in this chapter to determine whether there has been a material and substantial change in circumstances under Section 14.08(c)(2) of this code that may warrant a modification of an existing child support order if the modification is in the best interest of the child. However, an increase in the needs, standard of living, or lifestyle of the obligee since the rendering of the existing order does not warrant an increase in the obligor's child support obligation. If the amount of support of a child contained in the order sought to be modified is not in substantial compliance with the guidelines, this may warrant a modification of a prior order in accordance with the guidelines if the modification is in the best interest of the child.

(b) Additional Factors. In addition to the factors listed in these guidelines, a court may consider other relevant factors. The support obligation owed to a subsequently born or adopted child does not constitute cause to decrease the amount of an existing child support order. The history of support voluntarily provided in excess of the court order does not constitute cause to increase the amount of an existing child support order.

(c) Net Resources of New Spouse. A court may not add any portion of the net resources of a new spouse to the net resources of an obligor or obligee in order to calculate the amount of child support to be ordered on a motion to modify. Similarly, a court may not subtract the needs of a new spouse, or of a dependent of a new spouse, from the net resources of the obligor or obligee. An increase in the needs, standard of living, or lifestyle of the obligee does not constitute cause to increase the obligor's child support obligation.

Sec. 14.057. FINDINGS IN CHILD SUPPORT ORDER. Without regard to Rules 296 through 299, Texas Rules of Civil Procedure, in all cases in which child support is contested and the amount of the order is set by the court, on written request made or filed with the court not later than 10 days after the date of the hearing or an oral request made in open court during the hearing, the court shall state the following in the child support order:

"(1) the amount of net resources available to the obligor per month is \$ \_\_\_\_\_;

"(2) the amount of net resources available to the obligee per month is \$ \_\_\_\_\_;

"(3) the amount of child support payments per month that is computed if Section 14.055, Family Code, is applied is \$ \_\_\_\_\_;

"(4) the percentage applied to the obligor's net resources for child support by the actual order rendered by the court is \_\_\_\_%; and, if applicable,

"(5) the specific reasons that the amount of support per month ordered by the court varies from the amount computed by applying the percentage guidelines pursuant to Section 14.055, Family Code, are: \_\_\_\_\_."

Sec. 14.058. POSTING NOTICE. A copy of the guidelines for the support of a child in this chapter shall be prominently displayed at or near the entrance to

the courtroom and on the official bulletin board, if any, in those courts having jurisdiction over the setting of child support.

SECTION 7. Section 14.08(i), Family Code, as relettered by S.B. No. 221, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(i) The power of the court to order a joint managing conservatorship under Section 14.021 of this code is a material and substantial change of circumstances sufficient to justify a modification of an existing sole managing conservatorship under this section if the sole managing conservatorship was ordered in a suit affecting the parent-child relationship in which a final judgment was not entered on or before September 1, 1987, without regard to whether the suit was commenced before, on, or after September 1, 1987. The power of the court to order a joint managing conservatorship under Section 14.021 of this code is not a material and substantial change of circumstances sufficient to justify a modification of an existing sole managing conservatorship under this section if the sole managing conservatorship was ordered in a suit affecting the parent-child relationship in which a final judgment was entered on or before September 1, 1987.

SECTION 8. This Act takes effect September 1, 1989, and applies only to an original or modification order or decree providing for possession of or access to or support of a child rendered on or after that date.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

#### **Floor Amendment - Danburg**

Amend the committee printing of C.S.S.B. 188 as follows:

On page 6, line 3, substitute the word "noon" for the term "10 a.m."

On page 6, line 7, substitute the word "noon" for the term "10 a.m."

Page 7, line 2, insert the word "written" before the word "notice."

Page 7, line 8, insert the word "written" before the word "notice."

Page 7, line 17, insert the word "written" before the word "notice."

Page 8, delete lines 17 to 24, and substitute the following:

"(1) either regular weekend possession beginning on the first, third and fifth Friday as provided under the terms of Subsection (c)(1) of this section, or not more than one weekend per month of the possessory conservator's choice beginning at 6 p.m. on the day school recesses for the weekend and ending at 6 p.m. on the day before school resumes after the weekend, provided that the possessory conservator gives the managing conservator seven days' written or telephonic notice preceding a designated weekend, and provided that the possessory conservator elects an option for this possession either before the rendition of the original or modification order or by written notice given to the managing conservator within 90 days after the parties begin to reside more than 100 miles apart, as applicable, and provided that such weekend possessions do not conflict with Subsections (e)(1)-(3) and (e)(8)-(10) of this section;"

Page 9, line 13, insert the word "written" before the word "notice."

Page 9, line 18, insert the word "written" before the word "notice."

Page 9, line 23, after the word "subsection," insert the following:

"provided that if a period of possession by the possessory conservator exceeds 30 days, the managing conservator may have possession of the child under the terms

of this subdivision on any two nonconsecutive weekends during that time period, and further"

Page 10, line 1, insert the word "written" before the word "notice."

Page 11, line 4, delete the word "and."

Page 11, line 10, delete the period and insert the following:

"(6) written notice shall be deemed to have been timely made if received or postmarked before or at the time that notice is due; and

(7) if a conservator's time of possession of a child ends at the time school resumes and for any reason the child is not or will not be returned to school, the conservator in possession of the child shall immediately notify the school and the other conservator that the child will not be or has not been returned to school."

Page 14, line 17 to 27, page 15, line 1 to 27, and page 16, line 1 to 9, delete all of the section entitled "Sec. 14.035. FAMILY VIOLENCE."

Page 19, line 9, insert the word "interest" before the word "income."

Page 19, line 10, after the word "notes" insert the words "not including return of principal or capital and"

Page 28, line 4, insert a new Section 8 of the bill and renumber accordingly, to read as follows:

"SECTION 8. Section 14.03(d), Family Code, is amended to read as follows:

(d) The court shall appoint as a possessory conservator the parent who is not appointed as a sole or joint managing conservator [may not deny possession of or access to a child to either or both parents] unless it finds that parental possession or access is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child. A parent not appointed as a managing or a possessory conservator may be ordered to perform other parental duties, including paying child support. The court shall consider the commission of family violence in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator. The terms of an order that denies possession of a child to a parent or imposes restrictions or limitations on a parent's right to possession of or access to a child shall not exceed those that are required to protect the best interest of the child."

The amendments were read.

(Senator Lyon in Chair)

Senator Brown moved to concur in the House amendments to S.B. 188.

The motion prevailed by the following vote: Yeas 19, Nays 4, Present-not voting 1.

Yeas: Armbrister, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Haley, Harris, Henderson, McFarland, Montford, Parker, Ratliff, Sims, Truan, Uribe, Zaffirini.

Nays: Johnson, Krier, Lyon, Tejeda.

Present-not voting: Glasgow.

Absent: Barrientos, Green, Leedom, Parmer, Santiesteban, Washington.

Absent-excused: Whitmire.

**SENATE BILL 404 WITH HOUSE AMENDMENTS**

Senator Henderson called **S.B. 404** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Floor Amendment - Denton**

Amend **S.B. 404** as follows:

At page 5, line 25 by striking the word "seven" and substituting "twenty-one".

**Floor Amendment on Third Reading - Hinojosa, Garcia, Denton**

Amend **S.B. 404** as follows:

On page 5, line 21, strike "a political subdivision, including"

On page 5, line 23, strike "political subdivision or"

The amendments were read.

Senator Henderson moved to concur in the House amendments to **S.B. 404**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Whitmire.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 12, 1989

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**S.C.R. 122**, Congratulating Gretchen Polhemus, Miss USA 1989.

**H.C.R. 133**, Commending the Top Ladies of Distinction.

**H.C.R. 218**, In memory of Arnold J. Crell.

**H.C.R. 219**, In memory of Ed Daniel.

**H.C.R. 222**, Commending Billy C. Hamilton.

**H.C.R. 230**, Honoring Billy Pickard.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

**SENATE BILL 713 WITH HOUSE AMENDMENT**

Senator Caperton called **S.B. 713** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Floor Amendment - Saunders**

Amend **S.B. 713** by adding a new Subsection (c) to Section 8.02 of the bill to read as follows:

(c) Section 26.12(d), Tax Code, does not apply to the district. If the district is created after June 30, the district may impose taxes as provided by the Tax Code as if the district had existed on January 1 of the year in which it is created.

The amendment was read.

Senator Caperton moved to concur in the House amendment to **S.B. 713**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Whitmire.

#### **SENATE BILL 717 WITH HOUSE AMENDMENT**

Senator Caperton called **S.B. 717** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### **Floor Amendment - Saunders**

Amend **S.B. 717** by adding the new Subsection (c) to Section 8.02 of the bill to read as follows:

(c) Section 26.12(d), Tax Code, does not apply to the district. If the district is created after June 30, the district may impose taxes as provided by the Tax Code as if the district had existed on January 1 of the year in which it is created.

The amendment was read.

Senator Caperton moved to concur in the House amendment to **S.B. 717**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Whitmire.

#### **SENATE BILL 297 WITH HOUSE AMENDMENT**

Senator Caperton called **S.B. 297** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### **Committee Amendment - Uher**

Amend **S.B. 297** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 52.021, Government Code, is amended by adding Subsection (e) to read as follows:

(e) A person who has successfully completed a registered professional reporter's examination administered by the National Shorthand Reporters Association having standards and requirements equivalent to or more difficult than those prescribed by this chapter, who has made proper application for and successfully passed Part B of the certification examination administered by the Court Reporters Certification Board, and who has been actively engaged in the practice of shorthand reporting while maintaining continuous membership in the national association is entitled to be certified to the supreme court in the manner provided by Section 52.024.

SECTION 2. Subsection (c), Section 52.047, Government Code, is amended to read as follows:

(c) On payment of the fee, the person requesting the transcript is entitled to the original and one copy of the transcript. The person may purchase additional

copies for a fee per page that does not exceed ~~[one-third of the original cost]~~ twenty-five cents per page.

SECTION 3. Subsection (b), Section 52.055, Government Code, is amended to read as follows:

(b) Travel expenses reimbursed under this section may not exceed the maximum allowable by Internal Revenue Service ~~[\$15 a day for hotel bills, 6 cents per mile for train or bus fares, and 16 cents per mile]~~ for the use of private conveyances, traveling the shortest practical route.

SECTION 4. Chapter 52, Government Code, is amended by adding Section 52.058 to read as follows:

Sec. 52.058. EXPENSES OF DISTRICT COURT REPORTERS IN CHANGE OF VENUE CASES. (a) Each official or deputy court reporter of a district court is entitled to reimbursement in the amount prescribed by Subsection (b) for reasonable and necessary expenses incurred while engaged in official duties during a trial being held under a change of venue order in any county of the state other than the county of the reporter's residence. This reimbursement is in addition to the reporter's regular salary.

(b) Travel expenses reimbursed under this section may not exceed the maximum allowable by the Internal Revenue Service for the use of private conveyances, traveling the shortest practical route.

(c) The expenses shall be reimbursed in accordance with the requirements of Subsections (c) and (e) of Section 52.055.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Caperton moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on S.B. 297 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Caperton, Chairman; Henderson, Parker, Bivins and Dickson.

#### LEAVE OF ABSENCE

Senator Santiesteban was granted leave of absence for the remainder of the day on account of illness on motion of Senator Brooks.

#### SENATE BILL 749 ON SECOND READING

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 749.** Relating to the payment of ad valorem taxes pending an appeal of an ad valorem tax determination.

The bill was read second time and was passed to engrossment viva voce vote.



**SENATE BILL 749 ON THIRD READING**

Senator Henderson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that S.B. 749 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Santiesteban, Whitmire.

(Senator Ratliff in Chair)

**SENATE BILL 750 ON SECOND READING**

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 750**, Relating to the interest paid on certain ad valorem tax refunds.

The bill was read second time and was passed to engrossment viva voce vote.

**SENATE BILL 750 ON THIRD READING**

Senator Henderson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that S.B. 750 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Santiesteban, Whitmire.

**COMMITTEE SUBSTITUTE  
SENATE BILL 437 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 437**, Relating to deceptive trade practices and consumer protection.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Amend **C.S.S.B. 437** by striking everything below the enacting clause and substituting the following:

**SECTION 1.** Section 17.42, Business & Commerce Code, is amended to read as follows:

**Sec. 17.42. WAIVERS: PUBLIC POLICY.** (a) Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable

and void, provided, however, that a waiver is valid and enforceable if a defendant in an action or claim under this subchapter pleads and proves (1) the consumer is not in a significantly disparate bargaining position; (2) the consumer is represented by legal counsel in seeking or acquiring goods or services, other than the purchase or lease of a family residence occupied or to be occupied as the consumer's residence, by a purchase or a lease for a consideration paid or to be paid that exceeds \$500,000; and (3) the consumer waives all or part of this subchapter, other than Section 17.555, by an express provision in a written contract signed by both the consumer and the consumer's legal counsel. ~~[a business consumer with assets of \$5 million or more according to the most recent financial statement of the business consumer prepared in accordance with generally accepted accounting principles that has knowledge and experience in financial and business matters that enable it to evaluate the merits and risks of a transaction and that is not in a significantly disparate bargaining position may by written contract waive the provisions of this subchapter, other than Section 17.555.]~~

(b) The existence or absence of a disparate bargaining position may not be established, as a matter of law, solely by evidence of the consumer's financial position relative to other parties to the contract or by matters contained in a written contract relating to the relative bargaining position of the parties.

SECTION 2. Sections 17.45(4) and (10), Business & Commerce Code, are amended to read as follows:

(4) "Consumer" means an individual, partnership, corporation, this state, or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services ~~[-except that the term does not include a business consumer that has assets of \$25 million or more, or that is owned or controlled by a corporation or entity with assets of \$25 million or more].~~

~~[(10) "Business consumer" means an individual, partnership, or corporation who seeks or acquires by purchase or lease, any goods or services for commercial or business use. The term does not include this state or a subdivision or agency of this state.]~~

SECTION 3. Section 17.50 (b)(1), Business & Commerce Code, is amended to read as follows:

(b) In a suit filed under this section, each consumer who prevails may obtain:

(1) the amount of actual damages found by the trier of fact. In addition the court shall award two times that portion of the actual damages that does not exceed \$1,000. If the trier of fact finds that the conduct of the defendant was committed knowingly, the trier of fact may award not more than three times the amount of actual damages in excess of \$1,000; provided that:

(A) the provisions of Chapters 33 and 41, Civil Practice & Remedies Code, shall govern the determination of the consumer's right under this subchapter to recover actual and other damages, including exemplary damages, and the amount of those damages that may be recovered by the consumer under this subchapter, in an action seeking damages for (i) death, (ii) personal injury other than mental anguish or distress associated with a violation of this subchapter that does not involve death or bodily injury, or (iii) damage to property other than the good acquired by the purchase or lease that is involved in the consumer's action or claim if that damage arises out of an occurrence that involves death or bodily injury; and

(B) only in an action under this subchapter that is subject to Subsection (A) of Section 17.50(b)(1), the consumer's right to recover damages shall be subject to any defense or defensive matter that could be considered by the trier of fact in an action subject to Chapter 33, Civil Practice & Remedies Code, in determining the percentage of responsibility attributable to the consumer claimant under that chapter.

SECTION 4. Sections 17.505(a)-(d), Business & Commerce Code, are amended to read as follows:

(a) As a prerequisite to filing a suit seeking damages under Subdivision (1) of Subsection (b) of Section 17.50 of this subchapter against any person, a consumer shall give written notice to the person at least 60 [30] days before filing the suit advising the person in reasonable detail of the consumer's specific complaint and the amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant. During the 60-day period a written request to inspect, in a reasonable manner and at a reasonable time and place, the good that is the subject of the consumer's action or claim may be presented to the consumer. If the consumer unreasonably refuses to permit the inspection, the court shall not award the two times actual damages not exceeding \$1,000, as provided in Subsection (c) of Section 17.50 of this subchapter.

(b) If the giving of 60 [30] days' written notice is rendered impracticable by reason of the necessity of filing suit in order to prevent the expiration of the statute of limitations or if the consumer's claim is asserted by way of counterclaim, the notice provided for in Subsection (a) of this section is not required, but the tender provided for by Subsection (c) of this section and by Subsection (d), Section 17.506 of this subchapter may be made within 60 [30] days after the filing of the suit or counterclaim.

(c) Any person who receives the written notice provided by Subsection (a) of this section may, within 60 [30] days after the receipt of the notice, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date of the written notice. A person who does not receive such a written notice due to the consumer's suit or counterclaim being filed as provided for by Subsection (b) of this section may, within 60 [30] days after the filing of such suit or counterclaim, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date the suit or counterclaim was filed. Any offer of settlement not accepted within 30 days of receipt by the consumer shall be deemed to have been rejected by the consumer.

(d) A settlement offer made in compliance with Subsection (c) of this section, if rejected by the consumer, may be filed with the court together with an affidavit certifying its rejection. If [the court finds that] the amount tendered in the settlement offer is the same as or more than, or if the court finds that amount to be substantially the same as, the actual damages found by the trier of fact, the consumer may not recover an amount in excess of the amount tendered in the settlement offer or the amount of actual damages found by the trier of fact, whichever is less. Such settlement offer shall not be admissible as evidence before a jury.

SECTION 5. Section 33.002(b), Civil Practice & Remedies Code, is amended to read as follows:

(b) This chapter does not apply to:

(1) an action to collect workers' compensation benefits under the workers' compensation laws of this state (Article 8306 et seq., Vernon's Texas Civil Statutes) or actions against an employer for exemplary damages arising out of the death of an employee;

(2) an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) except as specifically provided in Section 17.50 of that Act; or

(3) an action brought under Chapter 21, Insurance Code.

SECTION 6. Section 41.002(b)(1), Civil Practice & Remedies Code, is amended to read as follows:

(b) This chapter does not apply to:

(1) an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) except as specifically provided in Section 17.50 of that Act;

SECTION 7. (a) This Act applies to all actions or claims commenced on or after the effective date of this Act.

(b) An action or claim commenced before the effective date of this Act is governed with respect to the specific subject matters of this Act by the applicable law in effect before the effective date of this Act, and that prior law is continued in effect only for this purpose.

(c) In an action, claim, or suit in which a statute requires written notice to be given before the filing or bringing of the action, claim, or suit, personally delivering or depositing the notice, postage prepaid, in the United States mail before the effective date of this Act is considered filing or bringing the action before the effective date of this Act, if the suit is formally filed or otherwise brought within 120 days after the date of the delivery or mailing.

SECTION 8. This Act takes effect September 1, 1989.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

#### **COMMITTEE SUBSTITUTE SENATE BILL 437 ON THIRD READING**

Senator Montford moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.S.B. 437 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Santiesteban, Whitmire.

#### **MOTION TO PLACE SENATE JOINT RESOLUTION 66 ON SECOND READING**

Senator Brown asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**S.J.R. 66**, Proposing a constitutional amendment to modify the provisions for the redemption of real property sold at a tax sale.

There was objection.

Senator Brown then moved to suspend the regular order of business and take up **S.J.R. 66** for consideration at this time.

The motion was lost by the following vote: Yeas 10, Nays 15.

Yeas: Armbrister, Bivins, Brown, Caperton, Henderson, Krier, Leedom, Montford, Ratliff, Sims.

Nays: Barrientos, Brooks, Carriker, Dickson, Edwards, Green, Haley, Johnson, Lyon, Parker, Parmer, Tejeda, Truan, Washington, Zaffirini.

Absent: Glasgow, Harris, McFarland, Uribe.

Absent-excused: Santiesteban, Whitmire.

**HOUSE BILL 2136 ORDERED NOT PRINTED**

On motion of Senator Brooks and by unanimous consent, **H.B. 2136** was ordered not printed.

(Senator Glasgow in Chair)

**COMMITTEE SUBSTITUTE**

**SENATE BILL 1683 ON SECOND READING**

Senator Edwards asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**C.S.S.B. 1683**, Relating to the licensing and regulation of electricians and electrical contractors; providing a criminal penalty.

There was objection.

Senator Edwards then moved to suspend the regular order of business and take up **C.S.S.B. 1683** for consideration at this time.

The motion prevailed by the following vote: Yeas 24, Nays 5.

Yeas: Armbrister, Barrientos, Bivins, Brown, Caperton, Dickson, Edwards, Glasgow, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parmer, Ratliff, Tejeda, Truan, Uribe, Washington, Zaffirini.

Nays: Brooks, Carriker, Green, Parker, Sims.

Absent-excused: Santiesteban, Whitmire.

The bill was read second time.

Senator Edwards offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend the Committee Substitute to **S.B. 1683** as follows:

(1) On page 8, Line 33, replace Section (6) with the following:

(6) installation, maintenance, alteration, or repair of gas equipment and associated wiring owned or under the control of a gas utility that is used for communication or metering, or for the control, transmission, or distribution of natural gas; or work done by anyone who is regularly employed by a gas utility as a gas appliance installation or repair person in connecting of gas appliances to existing electrical installations, and who does not engage in the occupation of an electrician for the general public.

The amendment was read and was adopted viva voce vote.

Senator Edwards offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend the Committee Substitute to **S.B. 1683** as follows:

(1) On Page 3, Line 70, Subsection (i), change to read as follows:

(i) The Governor may remove an appointed Board Member from office if a member:

The amendment was read and was adopted viva voce vote.

Senator Edwards offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend the Committee Substitute to **S.B. 1683** as follows:

(1) On Page 8, Line 17, strike the word: "installation".

The amendment was read and was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1683 ON THIRD READING**

Senator Edwards moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1683** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 5.

Yeas: Armbrister, Barrientos, Bivins, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parmer, Ratliff, Tejada, Truan, Uribe, Zaffirini.

Nays: Brooks, Green, Parker, Sims, Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed viva voce vote.

**RECORD OF VOTES**

Senators Brooks, Carriker, Green, Parker and Sims asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE  
SENATE BILL 971 ON SECOND READING**

Senator Ratliff asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**C.S.S.B. 971**, Relating to creation of certain industrial development corporations supported by a tax and having the power to issue bonds and the power of eminent domain.

There was objection.

Senator Ratliff then moved to suspend the regular order of business and take up **C.S.S.B. 971** for consideration at this time.

The motion prevailed by the following vote: Yeas 23, Nays 5.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Glasgow, Green, Haley, Harris, Krier, Lyon, McFarland, Montford, Parmer, Ratliff, Sims, Tejada, Uribe, Washington, Zaffirini.

Nays: Edwards, Johnson, Leedom, Parker, Truan.

Absent: Henderson.

Absent-excused: Santiesteban, Whitmire.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend C.S.S.B. 971 by striking subsection (g) on page 2, and renumbering all subsequent sections accordingly.

The amendment was read and was adopted viva voce vote.

Senator Johnson offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend C.S.S.B. 971 as follows:

(1) Strike subsection (f) and insert in lieu thereof the following:

(f) The corporation may not exercise the power of eminent domain except by action of the governing body of the city that created the corporation.

(2) Strike subsection (h) and insert in lieu thereof the following:

(h) Section 24 of this Act does not apply to a corporation under this section.

The amendment was read and was adopted viva voce vote.

On motion of Senator Ratliff and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**RECORD OF VOTE**

Senator Truan asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**COMMITTEE SUBSTITUTE  
SENATE BILL 971 ON THIRD READING**

Senator Ratliff moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.S.B. 971 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 5.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Glasgow, Green, Haley, Harris, Johnson, Krier, Lyon, McFarland, Montford, Parmer, Ratliff, Sims, Tejeda, Uribe, Zaffirini.

Nays: Edwards, Leedom, Parker, Truan, Washington.

Absent: Henderson.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 4.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Lyon, McFarland, Montford, Parmer, Ratliff, Sims, Tejeda, Uribe, Washington, Zaffirini.

Nays: Edwards, Leedom, Parker, Truan.

Absent-excused: Santiesteban, Whitmire.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1626 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1626**, Relating to the licensing and regulation of home health care agencies and to permits to administer medication to patients of home health agencies.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Amend **C.S.S.B. 1626** as follows:

(1) On page 1, lines 34-39, by striking SECTION 2 in its entirety and renumbering the subsequent Sections accordingly.

(2) On page 2, line 35, by striking "or".

(3) On page 2, line 39, by adding "or" following "medication".

(4) On page 2, line 40, by adding a new subparagraph (3) to read as follows:

"(3) performs duties as a qualified dialysis technician within the scope authorized by board rules."

(5) On page 3, line 51, by adding a new subsection (k) to read as follows:

"(k) (1) A person authorized by this Section to administer medication to a patient of a home health agency may not dispense dangerous drugs or controlled substances without complying with the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes).

(2) An offense under this subsection is a class A misdemeanor."

The amendment was read and was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1626 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1626** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed viva voce vote.



**COMMITTEE SUBSTITUTE  
SENATE BILL 1414 ON SECOND READING**

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1414**, Relating to the development of a health affairs policy report.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1414 ON THIRD READING**

Senator Parker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1414** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed viva voce vote.

**SENATE BILL 1694 ON SECOND READING**

On motion of Senator Parmer and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1694**, Relating to crime control districts in certain counties; authorizing certain taxes; prohibiting the issuance of bonds other than performance and payment bonds; and granting the power of eminent domain.

The bill was read second time.

Senator Parmer offered the following amendment to the bill:

Amend **S.B. 1694** by striking all below the enacting clause and substituting in lieu thereof the following:

**SECTION 1.** The Crime Control District Act is enacted to read as follows:  
**ARTICLE 1. GENERAL PROVISIONS**

Sec. 1.01. **SHORT TITLE.** This Act may be cited as the Crime Control District Act.

Sec. 1.02. **LEGISLATIVE INTENT.** The intent of the legislature is to decrease the per capita crime rates in medium-sized urban counties that contain numerous municipalities by:

(1) increasing the deterrents to committing crimes through accelerating the speed and improving the abilities of the local criminal justice system;

(2) increasing the deterrents to committing crimes through facilitating the coordination among the many components of the criminal justice system in those counties; and

(3) assisting criminals to rehabilitate by expanding existing programs and providing new programs that help make these criminals constructive and responsible citizens.

Sec. 1.03. **LEGISLATIVE FINDINGS.** The legislature finds that:

(1) unacceptable levels of crime threaten the lives and property of citizens in medium-sized urban counties that contain numerous municipalities;

(2) medium-sized urban counties have greater needs than smaller-sized urban counties and do not enjoy the cost saving benefits that economies of scale provide the larger-sized urban counties;

(3) urban counties that contain numerous municipalities need to spend more funds coordinating the information and components of the criminal justice system than do urban counties that contain fewer municipalities;

(4) the revenue currently available to the state and to local governments is not sufficient to effectively reduce the levels of crime in medium-sized urban counties that contain numerous municipalities;

(5) ultimate responsibility for decreasing crime rests with local governments unless the criminal justice system is so overloaded that local governments are unable to affect the levels of crime;

(6) to the extent local governments can work together to create additional funds to overcome the overloaded criminal justice system, the responsibility for decreasing crime remains with local governments;

(7) additional revenue for these local governments can be spent on a variety of new and existing programs to help provide swift and effective administration of our criminal justice system; and

(8) the programs would provide a deterrent to criminal activity and would assist in the rehabilitation of criminals.

Sec. 1.04. DEFINITIONS. In this Act:

(1) "District" means a crime control district created under this Act.

(2) "Board" means the board of directors of the district.

(3) "Director" means a member of the board.

Sec. 1.05. COUNTIES AUTHORIZED TO CREATE DISTRICTS. A crime control district is established, subject to a confirmation election held as provided by Article 3 of this Act, in a county containing:

(1) a population of more than 750,000 but less than 1,250,000 according to the most recent federal census; and

(2) more than 30 incorporated municipalities according to the most recent federal census.

Sec. 1.06. BOUNDARIES. A district is composed of the geographical area of the county in which the district is created. A district may not contain more than one county.

## ARTICLE 2. TEMPORARY DIRECTORS

Sec. 2.01. TEMPORARY DIRECTORS. The following persons serve as temporary directors of a proposed district:

(1) a criminal district judge whose judicial district includes a part or all of the proposed district, selected by a majority of the judges of the district courts and criminal district courts of judicial districts that include a part or all of the proposed district;

(2) the district attorney of the county;

(3) the mayor or a city council member selected by the city council of the municipality having the largest population in the proposed district, according to the most recent federal census;

(4) the mayor or a city council member selected by the city council of the municipality having the second largest population in the proposed district, according to the most recent federal census;

(5) the mayor or a city council member of a municipality in the proposed district, other than the two municipalities in the proposed district having the largest populations, selected by a majority of the mayors of municipalities in the proposed district, other than the two municipalities having the largest populations;

(6) the county judge or a county commissioner selected by the commissioners court of the county; and

(7) a member of the general public, to be selected by a majority of the six temporary directors listed in Subdivisions (1) through (6) of this subsection.

Sec. 2.02. **TEMPORARY CHAIRMAN.** The chairman of a temporary board shall be elected by the members of the temporary board from their membership not later than the 15th day after the date on which the member of the general public is selected to the temporary board as provided by Section 2.03(c) of this Act.

Sec. 2.03. **TIME RESTRICTION FOR APPOINTING BOARD MEMBERS.** (a) Not later than the 60th day after the effective date of this Act, each group listed in Subdivisions (1), (3), (4), (5), and (6) of Section 2.01 of this Act shall make its selection under that section.

(b) Not later than the 75th day after the effective date of this Act, a temporary board shall organize.

(c) Not later than the 15th day after the date on which the board is organized under Subsection (b) of this section, a member of the general public shall be selected to the temporary board as provided by Subdivision (7) of Section 2.01 of this Act.

Sec. 2.04. **DESIGNATED ALTERNATE.** A temporary director who is not the temporary chairman may designate another person to serve in the director's place.

Sec. 2.05. **VACANCY IN OFFICE.** A vacancy in the office of temporary director shall be filled in the same manner that the vacant position was originally filled.

### **ARTICLE 3. CREATION OF DISTRICTS**

Sec. 3.01. **CREATION ELECTION.** A district may be created and a tax may be authorized only if the creation and the tax are approved by a majority of the qualified voters of the proposed district voting at an election called and held for that purpose.

Sec. 3.02. **ORDERING ELECTION.** After a majority of the temporary directors of a proposed district have approved a budget plan and an operating plan in accordance with Section 3.09 of this Act, a majority of the temporary directors may order that a creation election be held.

Sec. 3.03. **ELECTION ORDER.** (a) An order calling an election under Section 3.02 of this Act must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open;

(4) the location of the polling places;

(5) in summary form, the approved budget plan and crime control plan of the proposed district; and

(6) the proposed rate of the sales and use tax for the district.

(b) The proposed rate for the district sales and use tax imposed under Subchapter B, Chapter 323, Tax Code, may be only:

(1) one-fourth of one percent; or

(2) one-half of one percent.

Sec. 3.04. **NOTICE.** The temporary directors of a proposed district shall give notice of a creation election by publishing a substantial copy of the election order in a newspaper with general circulation in the proposed district once a week for two consecutive weeks. The first publication must appear at least 35 days before the date set for the election.

Sec. 3.05. **ELECTION DATE.** (a) A creation election shall be held not less than 35 days nor more than 60 days after the date on which the election is ordered.

(b) Section 41.001(a), Election Code, does not apply to a creation election ordered under this Act.

Sec. 3.06. **BALLOT PROPOSITION.** The ballot for a creation election shall be printed to permit voting for or against the proposition: "The creation of the \_\_\_\_\_ County Crime Control District and the adoption of a proposed local sales and use tax at a rate of \_\_\_\_\_ (the rate specified in the election order)."

Sec. 3.07. **CANVASSING RETURNS.** (a) Not earlier than the second day or later than the 13th day after the date of a creation election, the temporary board of a proposed district shall meet and canvass the returns of the election.

(b) If the temporary board finds that the election results are favorable to the proposition to create the district, the temporary board shall issue an order declaring the district created.

(c) If the temporary board finds that the election results are not favorable to the proposition to create the district, the temporary board may order another election on the matter not earlier than one year after the date of the preceding election.

Sec. 3.08. **DISSOLUTION OF TEMPORARY BOARD.** If a district has not been created under this Act before the fifth anniversary of the effective date of this Act, the temporary board is dissolved on that date and a district may not be created under this Act.

Sec. 3.09. **CRIME CONTROL PLAN AND BUDGET PLAN.** (a) The temporary board of a proposed district shall formulate and approve a two-year crime control plan and a two-year budget plan. The crime control plan must include:

(1) a detailed list of the crime control and crime prevention strategies to be supported by the district;

(2) the expected impact that the creation of the district would have on per capita rates of crime in the county in which the district is located and the amount of crime-related costs that would be avoided; and

(3) the method of evaluating the effectiveness and efficiency of individual crime control and crime prevention strategies.

(b) The budget plan must include:

(1) the amount of money budgeted by the district for each crime control and crime prevention strategy;

(2) the amount of money budgeted by the district for employee compensation;

(3) the amount of money budgeted by the district, and the percentage of the total budget of the district for administration, with individual amounts on how much of the administration would be conducted by the district and how much would be conducted by private or public entities;

(4) the amount of money needed to fund programs approved for funding by the board;

(5) the amount of money requested for programs that were not approved for funding by the board;

(6) the estimated cost per client for each program that has been approved by the board;

(7) the estimated amount of money available to the district from all sources during the ensuing year;

(8) the amount of balances expected at the end of the years for which the budget is prepared;

(9) the estimated amount of revenues and balances available to cover the proposed budget; and

(10) the estimated tax rate that will be required.

(c) The crime control plan and budget plan must be adopted in the same manner as provided for adoption of a proposed annual budget under Section 6.05 of this Act.

Sec. 3.10. **FINANCING CREATION OF DISTRICT.** (a) Except as provided by Subsection (b) of this section, the costs of creating a district shall be allocated as follows:

- (1) the county shall pay 40 percent;
- (2) the municipality having the largest population in the county shall pay 40 percent; and
- (3) the municipality having the second largest population in the county shall pay 20 percent.

(b) The county and the two municipalities may contract for a division of the costs of creating a district that is different from the division of costs described in Subsection (a) of this section.

(c) If a district is created, the district shall reimburse the county and municipalities for actual expenses incurred in the creation of the district.

#### **ARTICLE 4. DISTRICT ADMINISTRATION**

Sec. 4.01. **BOARD OF DIRECTORS.** (a) A district is governed by a board of seven directors appointed in the same manner as provided for the selection of temporary directors under Section 2.01 of this Act.

(b) Board members serve staggered two-year terms that expire September 1. The initial appointees under this section shall draw lots to determine:

- (1) the three directors to serve terms that expire on September 1 of the first year following creation of the district; and
- (2) the four directors to serve terms that expire on September 1 of the second year following creation of the district.

Sec. 4.02. **DESIGNATED ALTERNATE.** A director, other than the president or vice-president, may designate a person to serve in the director's absence.

Sec. 4.03. **BOND.** (a) Before assuming the duties of the office, each director or officer, including a person designated under Section 4.02 of this Act, must execute a bond for \$5,000 payable to the district, conditioned on the faithful performance of the person's duties as director or officer.

(b) The bond shall be kept in the permanent records of the district.

(c) A board may pay for the bonds of the directors or officers with district funds.

Sec. 4.04. **BOARD VACANCY.** A vacancy in the office of director shall be filled for the unexpired term in the same manner that the vacant position was originally filled.

Sec. 4.05. **OFFICERS.** A board shall elect from among its members a president and vice-president. The board shall also appoint a secretary. The secretary need not be a director. The person who performs the duties of county auditor shall serve as treasurer for the district and as an ex officio and nonvoting member of the board.

Sec. 4.06. **OFFICERS' TERMS; VACANCY.** (a) Each officer of a board serves for a term of one year.

(b) A vacancy in a board office shall be filled for the unexpired term by the board.

Sec. 4.07. **COMPENSATION.** Directors and officers, except the treasurer, serve without compensation, but all directors and officers may be reimbursed for actual expenses incurred in the performance of official duties. Those expenses must be reported in the district's minute book or other district records and must be approved by the board. The treasurer shall be compensated by the district in an amount determined by the board.

Sec. 4.08. **VOTING REQUIREMENT.** A concurrence of a majority of the members of a board is necessary in matters relating to the business of a district.

Sec. 4.09. ADMINISTRATOR. (a) A board may appoint an administrator of the district.

(b) The administrator serves at the will of the board.

(c) The administrator is entitled to compensation as determined by the board.

(d) Before assuming the person's duties, the administrator shall execute a bond payable to the district in the amount of not less than \$5,000, as determined by the board, conditioned on the faithful performance of the person's duties under this Act. The board may pay for the bond with district funds.

Sec. 4.10. DISTRICT EMPLOYEES. (a) A district may employ or pay for the employment of any necessary employees.

(b) A board may delegate to the administrator the authority to employ persons for the district on terms set by the administrator.

Sec. 4.11. GENERAL DUTIES OF ADMINISTRATOR. An administrator shall supervise the work and activities of the district and shall direct the general affairs of the district, subject to the limitations prescribed by the board.

Sec. 4.12. RETIREMENT AND OTHER EMPLOYEE BENEFITS. A board may provide retirement benefits for employees of the district by establishing or administering a retirement program or by electing to participate in the Texas County and District Retirement System or in any other statewide retirement system in which the district is eligible to participate. The board may provide other benefits for the employees as it considers appropriate.

#### ARTICLE 5. POWERS AND DUTIES

Sec. 5.01. DISTRICT RESPONSIBILITIES; LIMITATIONS ON EXPENDITURES. (a) A district may finance all the costs of a crime control and crime prevention program, including the costs for personnel, administration, expansion, and capital expenditures. A program may include:

- (1) police and law enforcement related programs, including:
  - (A) a multijurisdiction crime analysis center;
  - (B) mobilized crime analysis units;
  - (C) countywide crime stoppers telephone lines;
  - (D) united property-marking programs;
  - (E) home security inspection programs;
  - (F) an automated fingerprint analysis center;
  - (G) an enhanced radio dispatch center;
  - (H) a computerized criminal history system;
  - (I) enhanced information systems programs;
  - (J) a drug and chemical disposal center;
  - (K) a county crime lab; and
  - (L) a regional law enforcement training center;
- (2) community-related crime prevention strategies, including:
  - (A) block watch programs;
  - (B) a community crime resistance program;
  - (C) school-police programs;
  - (D) senior citizen community safety programs;
  - (E) senior citizen anti-crime networks;
  - (F) citizen crime-reporting projects;
  - (G) home alert programs;
  - (H) a police-community cooperation program;
  - (I) a radio alert program; and
  - (J) ride along programs;
- (3) specific treatment and prevention programs, including:
  - (A) positive peer group interaction programs;
  - (B) drug and alcohol awareness programs;
  - (C) countywide family violence centers;

- programs;
- (D) work incentive programs;
  - (E) social learning centers;
  - (F) transitional aid centers and preparole centers;
  - (G) guided group interaction programs;
  - (H) social development centers;
  - (I) street gang intervention centers;
  - (J) predelinquency intervention centers;
  - (K) school relations bureaus;
  - (L) integrated community education systems;
  - (M) steered straight programs;
  - (N) probation subsidy programs;
  - (O) Juvenile Offenders Learn Truth (JOLT)
- (P) reformatory visitation programs;
- (Q) juvenile awareness programs;
- (R) shock incarceration;
- (S) shock probation;
- (T) community restitution programs;
- (U) team probation;
- (V) electronic monitoring programs;
- (W) community improvement programs;
- (X) at home arrest;
- (Y) victim restitution programs;
- (Z) additional probation officers; and
- (AA) additional parole officers;
- (4) court and prosecution services, including:
- (A) court watch programs;
  - (B) community arbitration and mediation centers;
  - (C) night prosecutors programs;
  - (D) automated legal research systems;
  - (E) an automated court management system;
  - (F) a criminal court administrator;
  - (G) an automated court reporting system;
  - (H) additional district courts that are required by law
- to give preference to criminal cases, judges, and staff; and
- (I) additional prosecutors and staff; and
- (5) additional jails, jailers, guards, and other necessary staff.
- (b) The district may not:
- (1) fund any program that significantly duplicates existing programs or programs scheduled to begin;
  - (2) fund any facility that unnecessarily duplicates existing facilities or facilities scheduled to begin operation or construction;
  - (3) fund any equipment that unnecessarily duplicates existing equipment or equipment scheduled to begin operation;
  - (4) spend on administration more than three percent of the amount of revenue that would be generated if the tax rate imposed under the sales and use tax under Section 323.105, Tax Code, were one-half percent;
  - (5) fund a program if sufficient state or other local funds are available to fund the program;
  - (6) fund a facility or equipment if sufficient state or other local funds are available to fund the facility or equipment; and
  - (7) continue to fund a program, facility, or equipment in a municipality or county if the municipality or county fails to maintain the same level

of support for the program, facility, or equipment as it did the year before the district was created or in any following year, whichever is greater.

(c) The district shall fund a significant evaluation program to study the impact, efficiency, and effectiveness of additional courts, judges, and prosecutors and of new or expanded crime control and crime prevention programs.

Sec. 5.02. **MANAGEMENT, CONTROL, AND ADMINISTRATION.** (a) A board shall manage, control, and administer the district funds, except as provided by Section 6.06 of this Act.

(b) The board, from the sales and use tax revenue distributed by the county to the district under Section 323.105, Tax Code, must budget, to the extent practicable:

(1) not less than 49.75 percent of the revenue to finance programs for which applications are submitted under Section 6.11(a) of this Act; and

(2) not less than 49.75 percent of the revenue to finance programs for which applications are submitted under Section 6.11(b) of this Act.

Sec. 5.03. **OPEN MEETINGS; ADMINISTRATIVE PROCEDURE.** A board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 5.04. **LIABILITY.** A member of a board is not liable for civil damages or criminal prosecution for any act performed in good faith in the execution of duties as a board member or for an action taken by the board.

Sec. 5.05. **DISTRICT RULES.** A board may adopt rules governing district funded programs and the duties, functions, and responsibilities of district staff and employees.

Sec. 5.06. **METHODS AND PROCEDURES.** (a) A board may prescribe the method of making purchases and expenditures by and for the district; however, the board may enter purchasing contracts that involve spending more than \$5,000 only after competitive bidding as provided by Subchapter C, Chapter 262, Local Government Code, to the extent those provisions can be made applicable to the board.

(b) The board may prescribe accounting and control procedures for the district.

(c) If the county in which the district is located has a purchasing agent authorized by law, that agent shall serve as purchasing agent for the district, and the district shall compensate the purchasing agent for the person's service to the district in an amount determined by the board.

Sec. 5.07. **DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT.** The board may acquire or lease property, facilities, or equipment for the sole purpose of administering the district.

Sec. 5.08. **DISTRICT OPERATING AND MANAGEMENT CONTRACTS.** A board may enter into management contracts relating to the district on behalf of the district and may review the applications for program funding.

Sec. 5.09. **REIMBURSEMENT FOR SERVICES.** (a) A county or municipality located entirely outside the boundaries of the district shall, on request, reimburse a district for the district's cost of including in a district program a resident of that county or municipality.

(b) The board may require reimbursement from the state for the district's cost of including in a district program or facility a person who is a resident of the state but who is not a resident of the district.

(c) On behalf of the district, the board may contract with a municipal or county government or with the state or federal government for the municipality,



county, state, or federal government to reimburse the district for including a person in a district program.

Sec. 5.10. **SERVICE CONTRACTS.** When acting on behalf of a district, the board may contract with a municipality, county, special district, or other political subdivision of the state, with a state or federal agency, with individuals, and with the private sector to furnish the staff, facilities, equipment, programs, and services the board considers necessary for the effective operation of the district.

Sec. 5.11. **DONATIONS, GIFTS, AND ENDOWMENTS.** On behalf of a district, the board may accept donations, gifts, and endowments to be held in trust for any purpose and under any direction, limitation, or provision prescribed in writing by the donor that is consistent with this Act and the proper management of the district.

Sec. 5.12. **AUTHORITY TO SUE AND BE SUED.** A board may sue and be sued in the name of a district.

#### **ARTICLE 6. DISTRICT FINANCES**

Sec. 6.01. **FISCAL YEAR.** (a) A district is operated on the basis of a fiscal year established by the board.

(b) A fiscal year may not be changed more than once in a 24-month period.

Sec. 6.02. **ANNUAL AUDIT.** Annually, a board shall have an audit made of the financial condition of the district by an independent auditor. The district shall compensate the auditor for the person's service to the district in an amount determined by the board.

Sec. 6.03. **DISTRICT AUDIT AND RECORDS.** An annual audit and other district records shall be open to inspection during regular business hours at the principal office of the district.

Sec. 6.04. **ANNUAL BUDGET.** (a) At the time directed by a board, the administrator of the district shall prepare for the district a proposed annual budget. The administrator shall consider the applications for program funding in preparing the budget.

(b) The proposed budget must contain a complete financial statement, including a statement of:

- (1) the outstanding obligations of the district;
- (2) the amount of cash on hand to the credit of each fund of the district;
- (3) the amount of money received by the district from all sources during the previous year;
- (4) the estimated amount of money available to the district from all sources during the current fiscal year;
- (5) the amount of money needed to fund programs approved for funding by the board;
- (6) the amount of money requested for programs that were not approved for funding by the board;
- (7) the estimated tax rate for the next fiscal year;
- (8) the amount of the balances expected at the end of the year in which the budget is being prepared; and
- (9) the estimated amount of revenues and balances available to cover the proposed budget.

Sec. 6.05. **NOTICE; BOARD HEARING; ADOPTION OF BUDGET.** (a) Not later than the 100th day before the beginning of each fiscal year, a board shall hold a public hearing on the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper with general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) Not later than the 80th day before the beginning of each fiscal year, the board shall adopt a budget by acting on the budget proposed by the administrator. The board may make any changes in the proposed budget that in its judgment the interests of the taxpayers demand.

(e) The board shall submit the budget to the commissioners court of the county in which the district is located not later than the 10th day after the date the budget was adopted.

(f) The board may, by rule, develop and adopt procedures for adopting a budget different from the procedures outlined in this article, but the board must hold public hearings relating to the budget.

Sec. 6.06. NOTICE; COMMISSIONERS COURT HEARING; APPROVAL OR REJECTION OF BUDGET. (a) Not later than the 45th day before the beginning of each fiscal year, the commissioners court of the county in which a district is located shall hold a public hearing on the proposed annual budget.

(b) The commissioners court shall publish notice of the hearing in a newspaper with general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and to participate at the hearing.

(d) The commissioners court shall approve or reject the budget submitted by the board not later than the 30th day before the beginning of the fiscal year. The commissioners court may not amend the budget.

(e) If the commissioners court rejects the budget submitted by the board, the commissioners court and the board shall meet and together amend and approve the budget before the beginning of the fiscal year.

(f) The budget may be amended after the beginning of the fiscal year on approval by the board and the commissioners court.

Sec. 6.07. LIMITATION ON EXPENDITURES. Money may be spent only for an expense included in an annual budget or an amendment to it.

Sec. 6.08. SWORN STATEMENT. Not later than the 60th day after the last day of each fiscal year, an administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Sec. 6.09. SPENDING AND INVESTMENT LIMITATIONS. (a) A district may not incur a debt payable from revenues of the district other than the revenues on hand or to be on hand in the current or immediately following fiscal year of the district.

(b) The board may not invest district funds in funds or securities other than those specified by Article 836 or 837, Revised Statutes, or by the Public Funds Investment Act of 1987 (Article 842a-2, Vernon's Texas Civil Statutes).

Sec. 6.10. DEPOSIT OF FUNDS. (a) A board shall deposit district funds in a special account in the county treasury of the county in which the district is located.

(b) District funds, other than those invested as provided by Subsection (b) of Section 6.09 of this Act, shall be deposited as received in the county treasury and must remain on deposit.

Sec. 6.11. APPLICATIONS FOR PROGRAM FUNDING. (a) A county officer or the head of a department of the county in which a district is created may, with the consent of the commissioners court, apply to the board for funding of a program as described by Section 5.01 of this Act.

(b) A chief administrative officer of a municipality that is completely or partly located within a district may, with the consent of the governing body of the municipality, apply to the board for funding of a program as described by Section 5.01 of this Act.

(c) Applications under this section must be submitted not later than the 140th day before the beginning of the fiscal year, unless an exception has been adopted by rule.

(d) The board may, by rule, develop and adopt application procedures.

#### **ARTICLE 7. BONDS**

Sec. 7.01. **BONDS.** A board may not issue or sell general obligation bonds, revenue bonds, or refunding bonds. The board and the district may issue or sell bonds conditioned on the faithful performance of a person's duties as director or administrator as provided by Sections 4.03 and 4.09 of this Act.

#### **ARTICLE 8. DISTRICT CONTINUATION**

Sec. 8.01. **CONTINUATION REFERENDUM.** (a) A board may hold a referendum on the question of whether to continue the district.

(b) The board shall order a continuation referendum if a petition that requests continuation of the district is presented in accordance with this article or if a majority of the commissioners court of the county in which the district is located by resolution requests continuation after notice and a public hearing on the matter. However, the board may not hold a continuation referendum earlier than five years after the date the district was created or earlier than three years after the date of the last preceding continuation or dissolution referendum.

(c) For a continuation referendum, the ballot shall be printed to permit voting for or against the proposition: "Whether the \_\_\_\_\_ County Crime Control District should be continued and the crime control district sales and use tax should be continued."

Sec. 8.02. **METHODS FOR INITIATING ELECTION.** A board may order a continuation referendum on its own motion by a majority vote of its members. The board shall order a continuation referendum:

(1) on the presentation of a petition meeting the requirements of Sections 8.03-8.08 of this Act; or

(2) on the request of the commissioners court under Subsection (b) of Section 8.01 of this Act.

Sec. 8.03. **APPLICATION FOR PETITION; ISSUANCE.** If petitioned to do so by written application of 10 or more registered voters of a district, the county clerk of the county in which the district is located shall issue to the applicants a petition to be circulated among registered voters for their signatures.

Sec. 8.04. **CONTENTS OF APPLICATION.** To be valid, an application for a petition must contain:

(1) a heading, in the following words: "Application for a Petition for a Local Option Referendum to Continue the Crime Control District and to Continue the Crime Control District Sales and Use Tax";

(2) a statement of the issue to be voted on, in the following words: "Whether the \_\_\_\_\_ County Crime Control District should be continued and the crime control district sales and use tax should be continued";

(3) a statement immediately above the signatures of the applicants, reading as follows: "It is the purpose and intent of the applicants whose signatures appear below that the crime control district be continued and the crime control district sales and use tax in \_\_\_\_\_ County be continued"; and

(4) the printed name, signature, residence address, and voter registration certificate number of each applicant.

Sec. 8.05. **CONTENTS OF PETITION.** To be valid, a petition must contain:

(1) a heading, in the following words: "Petition for a Local Option Referendum to Continue the \_\_\_\_\_ County Crime Control District and to Continue the Crime Control District Sales and Use Tax";

(2) a statement of the issue to be voted on, in the same words used in the application;

(3) a statement immediately above the signatures of the petitioners, reading as follows: "It is the purpose and intent of the petitioners whose signatures appear below that the crime control district be continued and the crime control district sales and use tax in \_\_\_\_\_ County be continued";

(4) lines and spaces for the names, signatures, residence addresses, and voter registration certificate numbers of the petitioners; and

(5) the date of issuance, the serial number, and the seal of the county clerk on each page.

Sec. 8.06. COPIES. A county clerk shall keep an application and a copy of the petition in the files of the county clerk's office. The clerk shall issue to the applicants as many copies as they request.

Sec. 8.07. FILING OF PETITION; NUMBER OF SIGNATURES. To form the basis for the ordering of a referendum, the petition must be filed with the county clerk not later than the 60th day after the date of its issuance, and it must contain a number of signatures of registered voters of the county equal to five percent of the number of votes cast in the county for all candidates for governor in the most recent gubernatorial general election.

Sec. 8.08. REVIEW BY COUNTY CLERK. (a) A county clerk shall, on request of any person, check each name on a petition to determine whether the signer is a registered voter of the county. A person requesting verification by the county clerk shall pay the county clerk a sum equal to 20 cents per name before commencement of the verification.

(b) The county clerk may not count a signature if there is reason to believe that:

- (1) it is not the actual signature of the purported signer;
- (2) the voter registration certificate number is not correct;
- (3) it is a duplication either of a name or of handwriting used in any other signature on the petition;
- (4) the residence address of the signer is not correct; or
- (5) the name of the voter is not signed exactly as it appears on the official copy of the current list of registered voters for the voting year in which the petition is issued.

Sec. 8.09. CERTIFICATION. Not later than the 40th day after the date a petition is filed, excluding Saturdays, Sundays, and legal holidays, a county clerk shall certify to the board the number of registered voters signing the petition.

Sec. 8.10. ORDER OF ELECTION. (a) A board shall record on its minutes the date the petition is filed and the date it is certified by the county clerk.

(b) If the petition contains the required number of signatures and is in proper order, the board shall, at its next regular session after the certification by the county clerk, order a referendum to be held at the regular polling place in each county election precinct in the county on the next uniform election date authorized by Section 41.001(a), Election Code, that occurs at least 20 days after the date of the order. The board shall state in the order the proposition to be voted on in the referendum. The order is prima facie evidence of compliance with all provisions necessary to give it validity.

Sec. 8.11. APPLICATION OF ELECTION CODE. A continuation referendum shall be held and the returns shall be prepared and canvassed in conformity with the Election Code.

Sec. 8.12. RESULTS OF REFERENDUM. (a) If a majority of the votes cast in a referendum under this section are not for the continuation of a district:

- (1) the board shall certify that fact to the secretary of state not later than the 10th day after the date of the canvass of the returns; and
- (2) the district is dissolved and ceases to operate except as provided by Subsection (b) of this section.

(b) A district that is dissolved and that owns property or has outstanding short-term or long-term liabilities may continue to operate on a temporary basis as provided by Section 10.02 of this Act.

(c) If a majority of the votes cast in the referendum under this section are for the continuation of the district, another continuation referendum may not be held except as authorized by Section 8.01 of this Act.

Sec. 8.13. CONTEST OF ELECTION. Not later than the 30th day after the date the result of a continuation referendum is declared, any qualified voter of the district may contest the election by filing a petition in a district court located in the district.

#### ARTICLE 9. DISTRICT DISSOLUTION

Sec. 9.01. DISSOLUTION REFERENDUM. (a) A board may hold a referendum on the question of whether to dissolve the district.

(b) The board shall order a dissolution referendum if a petition that requests dissolution of the district is presented in accordance with this article or if a majority of the commissioners court of the county in which the district is located by resolution requests dissolution after notice and a public hearing on the matter. However, the board may not hold a dissolution referendum earlier than five years after the date the district was created or earlier than three years after the date of the last preceding continuation or dissolution referendum.

(c) For a dissolution referendum, the ballot shall be printed to permit voting for or against the proposition: "Whether the \_\_\_\_\_ County Crime Control District should be dissolved and the crime control district sales and use tax should be abolished."

Sec. 9.02. METHODS FOR INITIATING ELECTION. A board may order a dissolution referendum on its own motion by a majority vote of its members. The board shall order a dissolution referendum:

(1) on the presentation of a petition meeting the requirements of Sections 9.03-9.08 of this Act; or

(2) on the request of the commissioners court under Subsection (b) of Section 9.01 of this Act.

Sec. 9.03. APPLICATION FOR PETITION; ISSUANCE. If petitioned to do so by written application of 10 or more registered voters of a district, the county clerk of the county in which the district is located shall issue to the applicants a petition to be circulated among registered voters for their signatures.

Sec. 9.04. CONTENTS OF APPLICATION. To be valid, an application for a petition must contain:

(1) a heading, in the following words: "Application for a Petition for a Local Option Referendum to Dissolve the Crime Control District and to Abolish the Crime Control District Sales and Use Tax";

(2) a statement of the issue to be voted on, in the following words: "Whether the \_\_\_\_\_ County Crime Control District should be dissolved and the crime control district sales and use tax should be abolished";

(3) a statement immediately above the signatures of the applicants, reading as follows: "It is the purpose and intent of the applicants whose signatures appear below that the crime control district be dissolved and the crime control district sales and use tax in \_\_\_\_\_ County be abolished"; and

(4) the printed name, signature, residence address, and voter registration certificate number of each applicant.

Sec. 9.05. CONTENTS OF PETITION. To be valid, a petition must contain:

(1) a heading, in the following words: "Petition for a Local Option Referendum to Dissolve the \_\_\_\_\_ County Crime Control District and to Abolish the Crime Control District Sales and Use Tax";

(2) a statement of the issue to be voted on, in the same words used in the application;

(3) a statement immediately above the signatures of the petitioners, reading as follows: "It is the purpose and intent of the petitioners whose signatures appear below that the crime control district be dissolved and the crime control district sales and use tax in \_\_\_\_\_ County be abolished";

(4) lines and spaces for the names, signatures, residence addresses, and voter registration certificate numbers of the petitioners; and

(5) the date of issuance, the serial number, and the seal of the county clerk on each page.

Sec. 9.06. COPIES. A county clerk shall keep an application and a copy of the petition in the files of the county clerk's office. The clerk shall issue to the applicants as many copies as they request.

Sec. 9.07. FILING OF PETITION; NUMBER OF SIGNATURES. To form the basis for the ordering of a referendum, the petition must be filed with the county clerk not later than the 60th day after the date of its issuance, and it must contain a number of signatures of registered voters of the county equal to five percent of the number of votes cast in the county for all candidates for governor in the most recent gubernatorial general election.

Sec. 9.08. REVIEW BY COUNTY CLERK. (a) A county clerk shall, on request of any person, check each name on a petition to determine whether the signer is a registered voter of the county. A person requesting verification by the county clerk shall pay the county clerk a sum equal to 20 cents per name before commencement of the verification.

(b) The county clerk may not count a signature if there is reason to believe that:

- (1) it is not the actual signature of the purported signer;
- (2) the voter registration certificate number is not correct;
- (3) it is a duplication either of a name or of handwriting used in any other signature on the petition;
- (4) the residence address of the signer is not correct; or
- (5) the name of the voter is not signed exactly as it appears on the official copy of the current list of registered voters for the voting year in which the petition is issued.

Sec. 9.09. CERTIFICATION. Not later than the 40th day after the date a petition is filed, excluding Saturdays, Sundays, and legal holidays, a county clerk shall certify to the board the number of registered voters signing the petition.

Sec. 9.10. ORDER OF ELECTION. (a) A board shall record on its minutes the date the petition is filed and the date it is certified by the county clerk.

(b) If the petition contains the required number of signatures and is in proper order, the board shall, at its next regular session after the certification by the county clerk, order a referendum to be held at the regular polling place in each county election precinct in the county on the next uniform election date authorized by Section 41.001(a), Election Code, that occurs at least 20 days after the date of the order. The board shall state in the order the proposition to be voted on in the referendum. The order is prima facie evidence of compliance with all provisions necessary to give it validity.

Sec. 9.11. APPLICATION OF ELECTION CODE. A dissolution referendum shall be held and the returns shall be prepared and canvassed in conformity with the Election Code.

Sec. 9.12. RESULTS OF REFERENDUM. (a) If a majority of the votes cast in a referendum under this section are for the dissolution of a district:

- (1) the board shall certify that fact to the secretary of state not later than the 10th day after the date of the canvass of the returns; and

(2) the district is dissolved and ceases to operate except as provided by Subsection (b) of this section.

(b) A district that is dissolved and that has outstanding short-term or long-term liabilities may continue to operate on a temporary basis as provided by Section 10.02 of this Act.

(c) If less than a majority of the votes cast in the referendum under this section are for the dissolution of the district, another dissolution referendum may not be held except as authorized by Section 9.01 of this Act.

Sec. 9.13. CONTEST OF ELECTION. Not later than the 30th day after the date the result of a dissolution referendum is declared, any qualified voter of the district may contest the election by filing a petition in a district court located in the district.

#### ARTICLE 10. DISSOLUTION

Sec. 10.01. SUNSET PROVISION. (a) A district is dissolved seven years after the date the district was created if the district has not held a continuation or dissolution referendum.

(b) A district is dissolved five years after the date of the most recent continuation or dissolution referendum.

Sec. 10.02. DISSOLUTION OF DISTRICT. (a) On the date that the district is dissolved, the district shall, as prescribed by Subsection (h) of this section, convey or transfer to the county and municipalities in the district the following:

(1) title to land, buildings, real and tangible improvements, and equipment owned by the district;

(2) operating funds and reserves for operating expenses and funds that have been budgeted by the district for the remainder of the fiscal year in which the district is dissolved to support crime control activities and programs for residents of the county;

(3) taxes levied by the district during the current year for crime control purposes;

(4) funds established for payment of indebtedness assumed by the district; and

(5) any accumulated employee retirement funds.

(b) After the date the district is dissolved, the district may not levy taxes for district purposes or for providing crime control activities and programs for the residents of the district.

(c) If on the date that the district is dissolved the district has outstanding short-term or long-term liabilities, the board shall, not later than the 30th day after the dissolution, adopt a resolution certifying each outstanding short-term and long-term liability. The county in which the district is located shall assume the outstanding short-term and long-term liabilities. The county shall collect the sales and use tax authorized by Section 323.105, Tax Code, for the remainder of the calendar year and may by resolution of the commissioners court continue to collect the tax for an additional calendar year if the revenue from the tax is needed to retire liabilities of the district that were assumed by the county. The commissioners court shall notify the comptroller of this continuation not later than the 60th day before the date on which the tax would otherwise expire. Any tax collected after the liabilities have been retired shall be transferred or conveyed as prescribed by Subsection (a) of this section.

(d) The district and the board may continue to operate for a period not to exceed two months after carrying out the responsibilities required by Subsections (a) and (c) of this section. The board and the district are continued in effect for the purpose of satisfying these responsibilities.

(e) If the board and the district are continued in effect under Subsection (d) of this section, the board and district are dissolved entirely on the first day of the

month following the month in which the board issues an order certifying to the secretary of state that no responsibilities of Subsections (a) and (c) of this section are left unsatisfied.

(f) A district or board that continues to operate under Subsection (d) of this section may not incur any new liabilities without the approval of the commissioners court of the county in which the district is located. Not later than the 60th day after the date of the dissolution referendum, the commissioners court shall review the outstanding liabilities of the district and set a specific date by which the county must retire the district's outstanding liabilities.

(g) On the date that the district is dissolved, district-funded programs, including additional courts, shall immediately terminate and district-funded personnel, except personnel required to retire the responsibilities of the district, are terminated.

(h) The board shall convey or transfer the value of the items described in Subsection (a) of this section as follows:

- (1) 50 percent to the county; and
- (2) 50 percent to the municipalities in the district, with the municipalities' share allocated proportionately among the municipalities according to the percentage of each municipality's population in relation to the total population of the county.

#### ARTICLE 11. STATE LIABILITY

Sec. 11.01. STATE LIABILITY. The state is not obligated for the support, maintenance, or dissolution of a crime control district created under this Act.

SECTION 2. AMENDMENT. Subchapter B, Chapter 323, Tax Code, is amended by adding Section 323.105 to read as follows:

Sec. 323.105. CRIME CONTROL DISTRICT TAX. (a) Subject to an election held in accordance with the Crime Control District Act, a county in which a crime control district is established shall adopt a sales and use tax for the purpose of financing the operation of the crime control district. The revenue from the tax may be used only for the purpose of financing the operation of the crime control district. The proposition for adopting a tax under this section and the proposition for creation of a crime control district shall be submitted at the same election. For purposes of Section 323.101(c) of this code, a tax under this section is not a county sales and use tax.

(b) A tax adopted by a county under this section for financing the operation of a crime control district in the county may be decreased in increments of one-fourth of one percent by order of the board of directors of the crime control district. The rate of a tax adopted by a county under this section may be increased in increments of one-fourth of one percent, not to exceed a total tax rate of one-half percent for financing the operation of the crime control district, by order of the board of directors of the crime control district if approved by a majority of the qualified voters voting at an election called by the board and held in the district on the question of increasing the tax rate. At the election, the ballot shall be printed to provide for voting for or against the following proposition: "The increase of the \_\_\_\_\_ County Crime Control District sales and use tax rate to \_\_\_\_\_ percent." If there is an increase or decrease under this subsection in the rate of a tax imposed under this section, the new rate takes effect on the first day of the next calendar year after the expiration of one calendar quarter after the comptroller receives notice of the increase or decrease. However, if the comptroller notifies the president of the board of directors of the district in writing within 10 days after receipt of the notification that the comptroller requires more time to implement reporting and collection procedures, the comptroller may delay implementation of the rate change for one whole calendar quarter. In that event, the new rate takes effect on the first day of the next calendar quarter following the elapsed quarter.



(c) The comptroller shall remit to the county amounts collected at the rate imposed under this section as part of the regular allocation of county tax revenue collected by the comptroller. Retailers may not be required to use the allocation and reporting procedures in the collection of taxes under this section different from the procedures that retailers use in the collection of other sales and use taxes under this chapter. An item, transaction, or service that is taxable in a county under a sales or use tax authorized by another section of this chapter is taxable under this section. An item, transaction, or service that is not taxable in a county under a sales or use tax authorized by another section of this chapter is not taxable under this section.

(d) If a county sales and use tax or a county sales and use tax rate increase for the purpose of financing a crime control district is approved, the county is responsible for distributing to the district that portion of the county sales and use tax revenue received from the comptroller that is to be used for the purposes of financing the crime control district. Not later than the 10th day after the date the county receives funds under this section from the comptroller, the county shall make the distribution in the proportion that the crime control portion of the tax rate bears to the total sales and use tax rate of the county. The amounts distributed to a crime control district are not considered to be sales and use tax revenue for the purpose of property tax reduction and computation of the county tax rate under Section 26.041, Tax Code.

SECTION 3. AMENDMENT. Subdivision (14), Section 51.001, Title 110B, Revised Statutes, is amended to read as follows:

(14) "Subdivision" means a county, a political unit that consists of all of the geographical area of one county or of all or part of more than one county, a political unit of a county that has taxing authority, a crime control district, the Texas Association of Counties, the Texas County and District Retirement System, or a city and county that jointly operate a city-county hospital under Chapter 383, Acts of the 48th Legislature, Regular Session, 1943 (Article 4494i, Vernon's Texas Civil Statutes), but does not include an incorporated city or town, a school district, or a junior college district.

SECTION 4. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Parmer and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

#### SENATE BILL 1694 ON THIRD READING

Senator Parmer moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that S.B. 1694 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Santiesteban, Whitmire.

#### **SENATE BILL 692 ON SECOND READING**

Senator Lyon asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**S.B. 692**, Relating to the compensation of a deputy sheriff assigned to duty as a bailiff in certain counties.

There was objection.

Senator Lyon then moved to suspend the regular order of business and take up **S.B. 692** for consideration at this time.

The motion prevailed by the following vote: Yeas 17, Nays 5.

Yeas: Armbrister, Barrientos, Brooks, Edwards, Glasgow, Green, Henderson, Johnson, Krier, Lyon, Parker, Parmer, Tejada, Truan, Uribe, Washington, Zaffirini.

Nays: Bivins, Leedom, Montford, Ratliff, Sims.

Absent: Brown, Caperton, Carriker, Dickson, Haley, Harris, McFarland.

Absent-excused: Santiesteban, Whitmire.

The bill was read second time and was passed to engrossment viva voce vote.

#### **RECORD OF VOTE**

Senator Bivins asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

#### **MOTION TO PLACE SENATE BILL 692 ON THIRD READING**

Senator Lyon moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **S.B. 692** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 17, Nays 9. (Not receiving four-fifths vote of Members present)

Yeas: Armbrister, Barrientos, Brooks, Caperton, Carriker, Edwards, Glasgow, Green, Haley, Johnson, Lyon, Parker, Parmer, Tejada, Truan, Uribe, Zaffirini.

Nays: Bivins, Brown, Harris, Henderson, Leedom, Montford, Ratliff, Sims, Washington.

Absent: Dickson, Krier, McFarland.

Absent-excused: Santiesteban, Whitmire.

#### **COMMITTEE SUBSTITUTE SENATE BILL 1256 ON SECOND READING**

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1256**, Relating to the certification of real estate appraisers.

The bill was read second time.

Senator Lyon offered the following amendment to the bill:

Amend C.S.S.B. 1256 as follows:

On page 1, line 53, strike "board" and substitute the word "commission".

On page 1, lines 57 through 59, strike:

"For purposes of this subsection, one year of real property appraisal experience is defined as a minimum of 1,440 hours actively engaged in developing and communicating appraisals."

On page 2, line 7, strike "committee" and substitute the word "commission".

On page 2, line 20, strike "committee" and substitute the word "commission".

On page 2, line 25, strike "committee" and substitute the word "commission".

On page 2, line 27, strike "committee" and substitute the word "commission".

On page 2, lines 60 through 62, strike:

"At least five of the committee members shall be members in good standing of a nationally recognized real estate appraisal organization, which"

and in lieu thereof, add the following:

"At least eight of the committee members must be members in good standing of a nationally recognized real estate appraiser organization, with not more than one member per appraiser organization represented, which"

On page 3 immediately after line 12 add a new SECTION 2 as follows and re-number all subsequent SECTIONS.

SECTION 2. Nothing herein shall prevent a licensed real estate salesman from performing appraisal services for a state certified real estate broker who is the sponsoring broker for said salesman.

The amendment was read and was adopted viva voce vote.

On motion of Senator Lyon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

#### COMMITTEE SUBSTITUTE SENATE BILL 1256 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.S.B. 1256 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 1, Present-not voting 1.

Nays: Washington.

Present-not voting: Brooks.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed viva voce vote.

**RECORD OF VOTE**

Senator Brooks asked to be recorded as voting "Present-not voting" on the passage of the bill.

**SENATE BILL 1669 ON SECOND READING**

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1669**, Relating to the creation of the County Court at Law of San Patricio County and to the service of the judge of that court on the county juvenile board.

The bill was read second time and was passed to engrossment viva voce vote.

**SENATE BILL 1669 ON THIRD READING**

Senator Truan moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **S.B. 1669** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1198 ON SECOND READING**

On motion of Senator Dickson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1198**, Relating to certain revenue collected as a city sales and use tax in a newly annexed area.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1198 ON THIRD READING**

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1198** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Santiesteban, Whitmire.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1765 ON SECOND READING**

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1765**, Relating to certain obsolete provisions addressing health and safety standards in some eleemosynary institutions; repealing Chapter 195, Acts of the 60th Legislature, 1967 (Article 3183g, Vernon's Texas Civil Statutes); and declaring an emergency.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1765 ON THIRD READING**

Senator Truan moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1765** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Santiesteban, Whitmire.

(President in Chair)

**COMMITTEE SUBSTITUTE  
SENATE BILL 1416 ON SECOND READING**

On motion of Senator Parmer and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1416**, Relating to the provision of affordable housing, other housing matters, subdivisions of land, and development projects; providing for the issuance of bonds; providing penalties.

The bill was read second time.

Senator Parmer offered the following amendment to the bill:

Amend **C.S.S.B. 1416** by adding a new Subsection (h) to Section 5, beginning after line 12 on page 4, to read as follows:

(h) A municipality with a population of 50,000 or more must adopt an expedited review and permitting process for all housing proposals in which not less than 50 percent of the housing to be provided will be affordable to those of low or moderate income, and must submit its expedited process to the board.

The amendment was read and was adopted viva voce vote.

On motion of Senator Parmer and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1416 ON THIRD READING**

Senator Parmer moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1416** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 617 ON THIRD READING**

Senator Washington moved that the regular order of business be suspended and that **C.S.S.B. 617** be placed on its third reading and final passage.

**C.S.S.B. 617**, Relating to regulation of private process servers; providing penalties.

The motion prevailed by the following vote: Yeas 18, Nays 9.

Yeas: Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Haley, Harris, Henderson, Krier, Leedom, Montford, Parker, Parmer, Ratliff, Sims, Tejada, Washington.

Nays: Armbrister, Barrientos, Edwards, Glasgow, Green, Johnson, Lyon, Truan, Zaffirini.

Absent: McFarland, Uribe.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed viva voce vote.

**RECORD OF VOTES**

Senators Barrientos, Green and Sims asked to be recorded as voting "Nay" on the final passage of the bill.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 12, 1989

**HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE**

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**H.C.R. 104**, Encouraging agencies and organizations involved in dropout prevention to extend services to youths 12 and 13 years of age.

**H.C.R. 107**, Creating the Statewide Media Task Force on Dropout Prevention.

Respectfully,

**BETTY MURRAY**, Chief Clerk  
House of Representatives

**SENATE BILL 1557 ON SECOND READING**

On motion of Senator Bivins and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1557**, Relating to the services and businesses eligible to hold an agricultural permit for transportation of agricultural commodities.

The bill was read second time and was passed to engrossment viva voce vote.

**SENATE BILL 1557 ON THIRD READING**

Senator Bivins moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **S.B. 1557** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Parker, Parmer, Ratliff, Sims, Tejada, Truan, Uribe, Zaffirini.

Nays: Montford, Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 1.

Nays: Montford.

Absent-excused: Santiesteban, Whitmire.

**COMMITTEE SUBSTITUTE****SENATE BILL 1570 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1570**, Relating to the establishment of a statewide telecommunications relay service for the hearing and speech impaired.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE****SENATE BILL 1570 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1570** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Santiesteban, Whitmire.

The bill was read third time and was passed viva voce vote.

**SENATE BILL 55 WITH HOUSE AMENDMENT**

Senator Brown called **S.B. 55** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.  
**Floor Amendment - A. Smith**

Amend **S.B. 55** by striking all below the enacting clause and substituting the following:

**SECTION 1.** Section 3(a), Article 38.22, Code of Criminal Procedure, is amended to read as follows:

(a) No oral or sign language statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless:

(1) an electronic recording, which may include motion picture, video tape, or other visual recording, is made of the statement;

(2) prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) the recording device was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered~~and reflects that the accused was advised before the interrogation that the interrogation will be recorded~~; ~~and~~

(4) all voices on the recording are identified; and

(5) on the request of the defendant, the attorney representing the state provides the defendant with a true, complete, and accurate copy of all recordings of the defendant made under this article or, in the absence of a request by the defendant, the attorney representing the state, not later than the 10th day before the commencement of a trial on the merits in the case, provides the defendant with a true, complete, and accurate copy of all recordings made under this article.

SECTION 2. The change in the law made by this Act applies only to the admissibility of a statement made on or after the effective date of this Act. The admissibility of a statement made before the effective date of this Act is covered by the law in effect when the statement was made, and the former law is continued in effect for this purpose.

SECTION 3. This Act takes effect September 1, 1989.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Brown moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 55 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chairman; Washington, McFarland, Santiesteban and Bivins.

#### **VOTE BY WHICH SENATE REFUSED TO CONFIRM NOMINATION RECONSIDERED**

On motion of Senator Truan, the vote by which the Senate refused to confirm the nomination of William G. Hendrick, to be a Member of the Radiation Advisory Board, was reconsidered by the following vote: Yeas 25, Nays 1.



Nays: Green.

Absent: Harris, Parker, Uribe.

Absent-excused: Santiesteban, Whitmire.

Question - Shall the Senate confirm William G. Hendrick to be a Member of the Radiation Advisory Board?

#### **MOTION TO RECOMMIT NOMINATION**

Senator Washington moved to recommit to the Nominations Committee the nomination of William G. Hendrick, to be a Member of the Radiation Advisory Board, with instructions to have James Huffines, Director of Governmental Appointments, Office of the Governor, appear before the Committee on Nominations.

On motion of Senator Washington and by unanimous consent, the motion to recommit was withdrawn.

#### **CONSIDERATION OF NOMINATION SET AS SPECIAL ORDER**

On motion of Senator Truan and by unanimous consent, consideration of the nomination of William G. Hendrick was set as Special Order for Thursday, May 18, 1989.

#### **GUEST INTRODUCED**

Upon recognition, Senator Krier introduced Mrs. Virginia Dial, mother of Senate Parliamentarian Steve Dial.

Mrs. Dial, seated in the Gallery, was welcomed by the Senate.

#### **SENATE RULE 11.11 SUSPENDED**

On motion of Senator Caperton and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Finance might consider S.B. 963 at 9:00 a.m. Monday, May 15, 1989.

#### **NOTICE OF SESSION TO HOLD LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Sims gave notice that a Local and Uncontested Bills Calendar would be held at 8:00 a.m. Monday, May 15, 1989.

#### **MEMORIAL RESOLUTIONS**

S.R. 625 - By Glasgow: In memory of Janet Ruth Cox of Mineral Wells.

S.R. 633 - By Sims: In memory of Elsie Boehle Schott of Lakehills.

S.R. 634 - By Glasgow: In memory of Louis Williams Herndon of Mansfield.

S.R. 635 - By Glasgow: In memory of J. C. Smith of Alvarado.

S.R. 636 - By Glasgow: In memory of Benjamin Clinton Herring of Mineral Wells.

S.R. 637 - By Glasgow: In memory of Jim Mitchell Dalton of Azle.

S.R. 638 - By Glasgow: In memory of Waldo J. Bither, Sr., of Aledo.

#### **RECESS**

On motion of Senator Lyon, the Senate at 12:38 p.m. took recess, in honor of all mothers on the occasion of Mother's Day, until 8:00 a.m. Monday, May 15, 1989.